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U.S. Immigration: The Origins and Evolution of Contemporary Issues and the Architecture of Future Reform

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U.S. Immigration:
The Origins and Evolution of Contemporary Issues and the Architecture of Future Reform

By

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Submitted in partial fulfillment
of the requirements for
Honors in the Department of Political Science

Union College

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ABSTRACT

BEAULE, ANDREW U.S. Immigration: The Origins and Evolution of Contemporary
Issues and the Architecture of Future Reform
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ADVISOR: Tom Lobe

In 1965, the United States Congress passed the *Immigration and Nationality Act*, attempting to remove racial, religious, and cultural discrimination from the immigration system. However, the infamous act and subsequent legislation have caused unintended consequences. Illegal immigration has skyrocketed despite a massive increase in border enforcement; and Central Americans, particularly Mexicans, have become the target of racial and cultural discrimination, much like the Southern European immigrants of the early 1900s. The current immigration system still relies on the framework passed nearly 50 years ago, proving to be insufficient for contemporary United States.

This thesis investigates the historical patterns in immigration legislation that have led to the contemporary issues that remain a subject of intense debate. The current system's ineffective and increasingly expensive programs have created backlogs of family members, simultaneously preventing the inflow of immigrants in specific sectors the U.S. economy and workforce desperately need. The thesis investigates current reform bills and proposals, objective research done by the Congressional Budget Office and Congressional Research Service, and research provided by a host of nongovernmental policy institutes. There is an objective reform proposal presented by the thesis to demonstrate how political bias and the current gridlocked Congress have prevented necessary reform.

This thesis is dedicated to
my parents, Richard and Melanie,
and to my girlfriend and best friend, Jillian,
without whom I would have never had the strength to complete this thesis.

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CHAPTER I: An Introduction

The Philosophical Immigration Debate

The philosophical debate on immigration is not unique to the United States. Nonetheless, as a nation founded by immigrants and continuously molded by immigrants, the United States is the perfect example to explore the relationship between immigration and national identity. The foundation of the United States is based in the Anglo-Protestant culture, which led to the White Anglo-Saxon Protestant becoming the face of a “true” American. Immigration laws, such as the *Chinese Exclusion Act* and the *Immigration Act of 1924*, sought to maintain that identity through a series of preventative measures. Immigrants who entered the United States were subject to violence, rejection from jobs, and cultural attacks through newspapers and protests. Despite the eventual assimilation of previous groups that were initially discriminated against, the United States is currently embattled in another “culture war,” this time with Hispanics. These “outsiders” are seen as a threat to the established identity of the United States. They do not speak English, are of a different race, and affect the United States economy and workforce.

Immigration is ingrained in the political and social history of the United States; and the concern over the impact of immigrants on American society and law began with the Founding Fathers. For example, “Thomas Jefferson worried that immigrants from monarchies would fail to support a republican system of government.”¹ Several of the Founding Fathers agreed with Jefferson, thereby demonstrating the link between the concerns about immigration in the United

¹ Christopher J. Coyne and Peter J. Boettke, “Institutions, Immigration, and Identities,” *NYU Journal of Law and Liberty*, 2005. http://www.law.nyu.edu/sites/default/files/ECM_PRO_060942.pdf, p.132.

States since its inception. Much like today, Benjamin Franklin, while impressed with other cultures, feared that “open immigration would erode the unique identity that made America what it was.”² This argument is the central apprehension of today, centuries later. While the United States calls itself “the melting pot,” it was not always this way. Several attempts have been made to reject ethnic diversity.

In the 1850s, Chinese workers, much like Hispanics today, migrated to the United States to work in low-skilled mining, agriculture, and factory work. Their greatest impact was helping build the railroads during the boom in the American West. As the importance and success of Chinese migrants increased, so did the “anti-Chinese sentiment among other workers in the American economy.”³ Economic and cultural tensions evolved, which led to social and legislative discrimination. There were various arguments that “Chinese [immigrants] ... lowered the cultural and moral standards of American society” because they “visit[ed] prostitutes, smoke[d] opium, or gamble[d].”⁴ Similarly, Americans believed Chinese immigrants would compromise the racial composition of the United States. Therefore, in 1882, Congress passed the *Chinese Exclusion Act*, which “suspended the immigration of Chinese laborers (skilled or unskilled) for a period of 10 years.”⁵ The *Chinese Exclusion Act* was the first bill to restrict immigration in the history of the United States; however, legislation did not stop there. The *Scott Act of 1888*, the *Geary Act of 1892*, and amendments to the *Chinese Exclusion Act* in 1902 not

² Ibid., p.132.

³ “MILESTONES: 1866–1898,” 2014, U.S. Department of State Office of the Historian, <http://history.state.gov/milestones/1866-1898/chinese-immigration>.

⁴ Ibid., p.1.

⁵ Ibid., p.1.

only extended the prohibition of Chinese immigrants, but strengthened it. It would take until 1943 for the Chinese exclusionary policies to be repealed.

When the United States declared war against Axis forces and joined in on World War I in April of 1917, German-Americans were put under the microscope. Although they had previously been good tax-paying citizens that had learned English, went to school, and worked hard, their allegiance to the United States as an immigrant group was suddenly questioned. National German-American Alliance (created in 1901) clubs, presumed to have been meeting places to discuss American issues and reminisce about memories of Germany, were now suspected of being fronts to spy on the United States. There were allegations against, and thousands of arrests of, Germans gathering intelligence for Germany. Furthermore, President Roosevelt rejected “hyphenated Americanism” (i.e. German-American), challenging one’s ability to have dual loyalty during a time of war. Several German-Americans “Americanized” their names and numerous businesses changed their names completely. Similar to anti-German passion during World War I, the loyalty of Japanese immigrants was questioned during World War II.

After the attack on Pearl Harbor by Japan, there was fear that Japanese-American citizens on the coasts of the United States were helping, or would further help, the efforts of Japan through a sense of loyalty to their home country. Therefore, President Roosevelt issued an executive order, calling for all Japanese-Americans to be relocated to federally monitored interment camps. The United States would apologize in 1988 for the egregious discriminatory actions; however, the damage of questioning the loyalty of immigrants was evident. Had these Japanese immigrants truly become Americans in their heart? Would they help the Japanese

cause, or stick by the United States? This example demonstrates the difficulties that several immigrant cultures have faced. Italian and Irish immigrants and their ties to Catholicism drew inquiry as to their ability to show loyalty to the United States over the Vatican. Clearly, immigrants face serious obstacles to gain legitimacy in their new country. Today, the United States is the most ethnically diverse country in the world, but it took decades and an evolution of acceptance to finally integrate various immigrant groups.

Currently, there are more immigrants living in the United States than ever before, as an incredible “one in every nine U.S. citizens is now an immigrant.”⁶ This number, although reflecting an increase in population, also demonstrates the rising importance of immigrants. With the drastic increase in Hispanic immigration and the ideological struggle of accepting immigrants, one can understand why immigration remains a hot topic. Immigration has many layers — economic, political, etc. — therefore, past discrimination and difficulties with integration provide a backdrop for the continued struggle for Hispanics. The increased cultural and economic impact by Hispanics on American society has resulted in stronger resentment. The effect of the Hispanic immigrant wave is debated by several experts in many different disciplines.

Samuel P. Huntington, an influential Political Scientist, wrote a book entitled: *Who Are We? The Challenges to America's National Identity*. Huntington focuses on the clash between Hispanics and the American identity. He asserts that American national identity is rooted in the Anglo-Protestant culture; and that the United States has based several government institutions and functions on it. The adherence to one language, English, and the emphasis on law and

⁶ Christopher J. Coyne and Peter J. Boettke, “Institutions, Immigration, and Identities,” NYU Journal of Law and Liberty, 2005. http://www.law.nyu.edu/sites/default/files/ECM_PRO_060942.pdf, p.132.

justice, “produced the ‘American Creed,’ defined by the principles of liberty, equality before the law, individualism, self-reliance, representative government and private property.”⁷ More important to Huntington’s argument is his emphasis on the Anglo-Protestant culture as the base of the “American Creed.” This base, according to Huntington, is being challenged by the great influx of Hispanic immigrants. Huntington posits that their presence in the United States endangers the established national identity, and could potentially cause a split in the nation — a dual identity. This duality is problematic, as Huntington fears United States political and social institutions would be divided.

Huntington argues today’s immigrant wave is much less diverse than previous ones. As I will present in the next chapter, Hispanic immigrants make up the plurality of immigrants, which is much different than the late 1890s and early 1900s when there were a vast number of different immigrant groups. Huntington believes this results in Hispanics having less incentive to learn English than the various immigrant groups of over a century ago. Additionally, Huntington asserts there are several other important reasons for the lack of Hispanic assimilation in the United States. The continuous inflow of *illegal* immigrants from Spanish-speaking countries results in less participation in social and political institutions, unlike that of the earlier, for instance, Italian and Irish immigrants. The *legal* immigration of earlier groups provided opportunities to be directly involved, whereas *illegal* Hispanic immigrants must worry about deportation. Huntington also declares the concentration of the Hispanic immigrant population near the Mexican border is an important factor for their continued persistence in maintaining social, linguistic, and economic values from their home country. This is also different than

⁷ Ibid., p.134.

previous immigration waves, where high diversity in distinct ethnic groups required them to interact with each other. This also provided the key reason to speak one language, English.

The argument by Huntington that immigrants from the late 1890s and early 1900s spoke English quicker than the Hispanic immigrants of the “third wave,” thereby accelerating their integration, has been challenged in other studies. In “Testing Huntington: Is Hispanic Immigration a Threat to American Identity?” by Jack Citrin, Amy Lerman, Michael Murakami, and Kathryn Pearson, evidence is provided that Hispanic immigrants are learning English at about the same pace as earlier immigrants. Citrin, Lerman, Murakami, and Pearson use the 1980 and 2000 censuses to track the trends in immigrants who “speak only English or English very well.”⁸ In the censuses, “residents [were] grouped both by their ancestral country of origin and whether they are foreign-born, native-born living with [an] immigrant parent, or native-born living outside an immigrant household.”⁹ Additionally, immigrants and their children who were from English-speaking countries were excluded from the research. Both the 1980 and 2000 census demonstrate a lack of knowledge of the English language among residents from Mexico. Initially, the 24 percent of Mexican immigrants that say they speak only English or speak English very well would seem low; however, “in the 2000 census, 50 percent of the native-born [children of Mexican immigrants] living in households of Mexican-born immigrants spoke only English or spoke English very well.”¹⁰ This demonstrates the ability of the children of Mexican immigrants to learn English quickly. The data directly challenges Huntington, as the “intergenerational rate

⁸ Jack Citrin, Amy Lerman, Michael Murakami, and Kathryn Pearson, “Testing Huntington: Is Hispanic Immigration a Threat to American Identity?” (United States: American Political Science Association, 2007), p.35.

⁹ Ibid., p.35.

¹⁰ Ibid., p.35.

of linguistic assimilation” by Mexican immigrant children was faster than all other immigrant groups surveyed.¹¹ Furthermore, Citrin, Lerman, Murakami, and Pearson found that recent Mexican immigrants learned English faster than in the past. The study concludes, most importantly, that “the trajectory of [Mexican immigrant] progeny’s assimilation resembles that of their European predecessor of a century ago, and their rate of linguistic assimilation is on par with or greater than those of other contemporary immigrant groups.”¹² This assertion by Citrin, Lerman, Murakami, and Pearson contradicts Huntington’s claim that the United States will become a bilingual country unless the government acts, while clearly demonstrating subsequent generations of immigrants assimilate into American culture.

An article by Jean S. Phinney, Gabriel Horenczyk, Karmela Liebkind, and Paul Vedder entitled “Ethnic Identity, Immigration, and Well-Being: An Interactional Perspective” focuses on the importance of the “attitudes and characteristics of immigrants and the responses of the receiving society, moderated by the particular circumstances of the immigrant group within the new society.”¹³ While Huntington grouped Hispanics together as part of a new-formed immigrant attitude toward the host country, Phinney, Horenczyk, Liebkind, and Vedder emphasize the differences among immigrant groups and individual immigrants in terms of maintaining their cultural identity and their adaptation to the new society. The authors assert that the degree of acceptance of immigrants through official immigration law — “actual and

¹¹ Ibid., p.35.

¹² Ibid., p.35.

¹³ Jean S. Phinney, Gabriel Horenczyk, Karmela Liebkind, and Paul Vedder, “Ethnic Identity, Immigration, and Well-Being: An Interactional Perspective,” *The Society for the Psychological Study of Social Issues*, 2001, <https://openaccess.leidenuniv.nl/bitstream/handle/1887/16666/JSI2001.pdf?sequence=2>, p.494.

perceived” — contributes to the attitudes of the immigrants.¹⁴ According to the article, ethnic identity is strongest when an immigrant group or individual immigrant strongly favors preserving their culture and original identity. Additionally, this identification with the immigrant’s culture is strengthened based on the new country’s lack of pluralistic acceptance. The opposite is true for a heightened sense of national identity. If the new country’s institutions and culture push for assimilation, the immigrant feels it must assimilate to be successful. Phinnery, Horenczyk, Liebkind, and Vedder also add that “in the face of real or perceived hostility toward immigrants or toward particular groups, some immigrants may downplay or reject their own ethnic identity; others may assert their pride in their cultural group and emphasize solidarity as a way of dealing with negative attitudes.”¹⁵ In this way, the immigrant’s cultural pride and the acceptance, or lack thereof, of the new country, are important in determining the level of assimilation.

Phinnery, Horenczyk, Liebkind, and Vedder further delve into the discussion on immigration and identity by citing that “most immigrants prefer integration.”¹⁶ Integration is different than assimilation, and the authors provide an explanation for the key disparity among the two. To distinguish, Phinnery, Horenczyk, Liebkind, and Vedder use two questions that are the “means of identifying strategies used by immigrants in dealing with acculturation: Is it considered to be of value to maintain one’s cultural heritage? Is it considered to be of value to develop relationships with the larger society?”¹⁷ According to Phinnery, Horenczyk, Liebkind, and Vedder, immigrants that assimilate have not placed value on their cultural heritage and do

¹⁴ Ibid., p.494.

¹⁵ Ibid., p.494.

¹⁶ Ibid., p.505.

¹⁷ Ibid., p.495.

consider relationships with larger society to be of value. By contrast, immigrants that have integrated not only believe relationships with the larger society are important, but also emphasize their cultural heritage. This distinction, according to the authors, is incredibly important. The assertion that immigrants prefer integration proves that immigrants retain their pride, while generally wanting to become part of their new society. Phinnery, Horenczyk, Liebkind, and Vedder contend integration results in an “integrated identity,” which creates the “feeling that one is both part of an ethnic group and part of the larger society.”¹⁸ This is undoubtedly true about most American immigrant groups. Italian-Americans, once negatively affected by anti-Papacy movements, have been essential to the evolution of American culture. Their status as Americans is unquestioned today, yet they maintain a strong pride for their heritage. Similarly, German-Americans hold picnics with traditional German music and food, such as bratwurst and bratkartoffeln, to celebrate the importance of their roots in Germany. While German-American loyalty was once put under a microscope, Germans now openly display their pride. The same can be said for Irish-Americans on Saint Patrick’s Day, where fervid devotion for their home country is admired by other Americans. Additionally, several immigrant groups, such as Norwegians in some parts of Minnesota, make up the majority of communities. The local grocery shops sell traditional Norwegian food, and an overall sense of pride in Norwegian culture is evident. Therefore, is it not possible that Hispanics will come to have an “integrated identity?” Phinnery, Horenczyk, Liebkind, and Vedder argue “official policies and attitudes of members of the host society as well as the local policies actually implemented and the prevailing

¹⁸ Ibid., p.505.

attitudes in the immediate surroundings of the immigrants” vary.¹⁹ Therefore, it is the host country that determines the level of integration through policy and its ability to accept new cultures. The authors propose four different levels of immigrant identification: assimilation, separation, marginalization, and integration, as a means of demonstrating the differences in identification between immigrant groups.²⁰

Phinnery, Horenczyk, Liebkind, and Vedder find that the adaptation of immigrants, due to ethnic and national identification, is most important. The authors posit that a society with a large number of immigrants that choose the “integrated identity” generally have “higher levels of overall well-being.”²¹ This is the result of an acceptance by the new society, rather than pressuring the immigrant to give up their ethnic identity. When immigrants are pressured to assimilate, “anger, depression, and, in some cases, violence” may occur.²² Native-Americans, although not an immigrant group, are a perfect example of how forced assimilation can lead to such negative outcomes. When the United States banned Native American languages and religions, several tribes rejected the laws in violent fashion. Additionally, due to the trauma these laws had on Native American culture, alcoholism and abuse against women in Native American communities are higher than any other group. Phinnery, Horenczyk, Liebkind, and Vedder also claim that if immigrants are subject to discrimination or rejection, their attempt to integrate into the host society will be hindered. This can be adapted to the current situation in the United States. Hispanics, who receive harsh discrimination, are less motivated to integrate themselves

¹⁹ Ibid., p.505.

²⁰ Ibid., p.505.

²¹ Ibid., p.505.

²² Ibid., p.505.

under the fear of rejection. Instead, along with a host of potential factors outlined by Samuel P. Huntington, Hispanics choose to concentrate themselves, providing a security blanket. Therefore, the United States is currently experiencing a separation by its largest immigrant group. This thesis will present evidence that immigrants are an important part of the future of the United States; and consequently, the United States must formulate policy in order to integrate those that have been marginalized. This strategy will help maintain the “American identity,” while promoting a more harmonious and prosperous future for the United States. Huntington argues this must come with an emphasis on the “American Creed.” He contends the United States needs to foster an environment in which Americans “participate in American life, learn America’s language [English], history, and customs, absorb America’s Anglo-Protestant culture, and identify primarily with America rather than their country of birth.”²³ His emphasis on the Anglo-Protestant culture troubles many critics; however, Huntington believes that America’s foundation on religious principles is key to its reinvigoration and continued longevity.

Huntington asks:

“Would America be the America it is today if in the 17th and 18th centuries it had been settled not by British Protestants but by French, Spanish, or Portuguese Catholics? The answer is no.

*It would not be America; it would be Quebec, Mexico, or Brazil.”*²⁴

Huntington illustrates the relationship between Protestantism and the American Creed by positing:

²³ Samuel P. Huntington, *Who Are We?: The Challenges to America's National Identity* (United States: Simon & Schuster, 2005), p.339.

²⁴ *Ibid.*, p.59.

*“The Protestant emphasis on the individual conscience and the responsibility of individuals to learn God’s truths directly from the Bible promoted American commitment to individualism, equality, and the rights to freedom of religion and opinion. Protestantism stressed the work ethic and the responsibility of the individual for his own success or failure in life ... With its congregational forms of church organization, Protestantism fostered opposition to hierarchy and the assumption that similar democratic forms should be employed in government.”*²⁵

The connection between Protestantism and the American values of hard work, responsibility, and Democratic values is a compelling argument for the irreversible impact Protestantism has had on the United States. Therefore, is it possible to shift away from these roots and maintain the “true” United States? Huntington believes it would be impossible; however, with a country becoming more secularized each year, it may be difficult to preserve the Anglo-Protestant culture.

The current situation in the United States is far from unique. Debates over immigration are a global issue. Several areas, including the European Union, Australia, Canada, Israel, Russia, and elsewhere, have experienced the controversial ideological approach to immigration. Policies are harshly criticized, violence may ensue, and each country finds it extremely difficult to tackle their own immigration problems. The national character and identity of a nation is held most sacred, but Huntington describes a “worse” America rather than simply a “different” one. European immigrants changed the United States, yet the ideals the Founding Fathers promoted stuck. It is the duty of the United States to find what is best for the welfare of the country, and to integrate those who will make a positive impact in the future.

²⁵ Ibid., p.68.

Perhaps the most intriguing aspect of the United States is that it was never truly a single-ethnic country. English, French, Dutch, and many other countries had settlers; and with the expansion of the United States — through the Louisiana Purchase and the conquest of the Southwest — more cultures were added. Therefore, it is safe to say that the controversial label of American identity has been around since the inception of the United States. The debate over immigration and national identity are irreversibly intertwined; and Americans, strong in their recognition of self-image and national pride, will not easily accept immigrants. Such has been the history of the United States, and it will only continue in the future.

CHAPTER II: The History of U.S. Immigration

Discrimination and Unintended Consequences

I. Immigration and National Identity

The history of United States immigration is a debate about values and national identity. The controversy over national character — not unique to immigration — has been an integral part of the evolution of the United States as a nation. Since the inception of the United States, its citizens have tried to create a national identity; and immigration is a perfect example to demonstrate its importance. In the early 1900s, Irish and Italian Catholics were discriminated against because they didn't fit the White Anglo-Saxon Protestant majority that had become the "face" of the United States. Today, these groups are regarded as two of the most influential nationalities to have immigrated to the United States. Central American immigrants, particularly Mexicans, receive the same harsh treatment that many Irish and Italian immigrants were subject to when they arrived. The sentiments toward "outsiders," those who are different from the United States "established identity," are seen as detrimental to the welfare of the United States. There is a perception that immigrants take good jobs from U.S. citizens; and since many don't speak English very well, if it at all, they are believed to not fit the mold of a "true" U.S. citizen. The debate over national identity is very contentious and incredibly important to the fabric of the United States. The United States is a country of immigrants in which each person's ancestry — except Native Americans — can be traced to another country. However, this has not stopped U.S. citizens from trying to settle on a single identity. While an established identity may hold for a specific period of time, several changes have occurred that have shifted the demographic

makeup of the United States. This chapter details the extraordinary debate over national character through the history of immigration, and how immigration reform has played a vital part in the evolution of United States culture. No matter what the issue at hand in immigration, the sense of national identity drives legislation and public opinion toward immigrants. To understand how powerful national character is, the *Immigration Act of 1924* is an excellent place to start.

II. The Quota System: America's Discriminatory Immigration Rules

The *Immigration and Nationality Act of 1965* was seen as the solution to growing frustration that the quota system (used by the United States as its immigration policy since the 1920s) was discriminatory and a burden on the country's welfare and power. There were two reasons opponents to the quota system argued for its removal: First, the system discriminated based on nationality. Politicians as well as scores of Southern and Eastern European Americans argued that the system violated the values of fairness and equality the United States was founded on. These claims gained traction as the Civil Rights Movement in the United States was peaking. In the quota system, if an immigration applicant was from a Southern or Eastern European country, there was a far slimmer chance that person would be admitted. Second, opponents to the system believed it lacked emphasis on family connections or merit-based labor acceptance. Opponents believed the United States would be better as a whole if those who had family already in the United States were admitted and able to set up generational ties. Similarly, other reform proponents contended that merit-based labor shortage immigration would allow the

immigration process to be more competitive and increase the talent level of those admitted to the United States. With better talent accepted and introduced into the workforce, the United States would benefit from an improved labor pool. President Lyndon B. Johnson was against the quota system, and argued for these merit-based changes:

*“This system [the quota system] violates the basic principle of American democracy — the principle that values and rewards each man on the basis of his merit as a man. It has been un-American in the highest sense, because it has been untrue to the faith that brought thousands to these shores even before we were a country.”*²⁶

In 1924, Congress passed the *Immigration Act (IA)* which outlined a significant change to United States immigration policy. Congress intended to significantly reduce overall immigration, preserve American ideals and jobs for citizens, and restore national and personal income. The act limited the annual number of immigrant admissions from each country to two percent of the total number of people from that country who were already living in the United States (according to the Census of 1890). The admission percentage system in the *IA* reduced total immigration from 357,803 in 1923-24 to 164,667 in 1924-25.²⁷ This reduction varied greatly. The goal of the bill was to restrict the entry of immigrants from Southern and Eastern Europe, while welcoming relatively large numbers of newcomers from Britain, Northern Ireland (the Protestant part of Ireland), and other Northern European countries. The *IA* cut the quota for Northern and Western European countries by 29 percent, whereas Southern and Eastern

²⁶ “Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act,” September 1995, Center for Immigration Studies, <http://cis.org/1965ImmigrationAct-MassImmigration>.

²⁷ “Who Was Shut Out?: Immigration Quotas, 1925-1927,” April 2002, History Matters, <http://historymatters.gmu.edu/d/5078/>.

European countries were slashed by 87 percent.²⁸ Immigration from Italy, for example, was cut by more than 90 percent, yet immigration from Great Britain and Northern Ireland only dropped 19 percent.²⁹ Over 86 percent of the 165,000 permitted to enter under the *IA*'s detailed quotas were allotted to Northern European countries.³⁰ The *IA* also outright prohibited the immigration of Middle Easterners, East Asians, and Indians, an even harsher treatment than that of Southern and Eastern Europeans. The *IA* intended to block "undesirable" immigration from Japan, China, the Philippines, Siam (Thailand), French Indochina (Laos, Vietnam, and Cambodia), Singapore, Korea, Dutch East Indies (Indonesia), Burma, India, Ceylon (Sri Lanka), and Malaya (mainland of Malaysia). The 1924 bill went further to restrict immigration. Section Eleven, Part B detailed that total immigration, as of July 1, 1927 (later postponed to July 1, 1929), would be limited to 150,000, where the proportion of the total people admitted from each country was based on that country's representation in the United States according to the 1920 Census.³¹

Why did the *Immigration Act of 1924* go through such lengths to discriminate against specific groups? It was an attempt to "to preserve the ideal of American homogeneity."³² Proponents of the law wanted to establish a distinct American identity. To do this, they favored White Anglo-Saxon Protestants over Southern and Eastern Europeans and those from the Asian-Pacific triangle. The *IA* had clearly established a discriminatory practice against Catholics and

²⁸ "The Immigration Act of 1924," February 2001, Portland State University, http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Immigration_Act_1924.pdf.

²⁹ "Who Was Shut Out?: Immigration Quotas, 1925-1927," April 2002, History Matters, <http://historymatters.gmu.edu/d/5078/>.

³⁰ *Ibid.*, p.1.

³¹ *Immigration Act of 1924* (Pub. L. 68-139), § 11(b)

³² "Milestones: 1921–1936," July 2007, U.S. Department of State, <https://history.state.gov/milestones/1921-1936/immigration-act>.

Jews, or anyone that did not fit the racial, ethnic, or religious makeup of America. There were fears over the Catholic Papacy, and the overwhelming majority of Italians who practiced Catholicism. Catholicism was seen by many White Anglo-Saxon Protestants as “anti-democracy;” and thus, Catholics were harshly discriminated against. The democratic character of the United States has always been important to U.S. citizens, and immigrants who were “ruled” by a single man (the Pope) were perceived as anti-democratic. Similarly, racial discrimination “maintained the racial preponderance of the basic strain on our people thereby to stabilize the ethnic composition of the population.”³³ The view at the time was that Southern and Eastern Europeans were poor, dirty, sick, and hungry, and therefore less capable to contribute to a growing capitalist U.S. economy or adapt to a predominantly White Anglo-Saxon Protestant American society.

The word “family” is mentioned once in *The Immigration Act of 1924*, and the word “merit” is never mentioned. Family reunification and merit-based labor shortage immigration were not emphasized in the *IA*, nor would they be until 1965. The *IA* was a clear attempt to curtail the national identity of the United States to favor White Anglo-Saxon Protestants. Likewise, since race was the predominant factor when considering an immigration application, those who were better qualified for a job to fill a gap in the workforce, but were not of the preferred racial, ethnic, or religious profile, would be disfavored for a worker that was. In 1965, during the height of the Civil Rights Movement, Congress corrected this 41 year-old policy by passing the *Immigration and Nationality Act*.

³³ Maldwyn A. Jones, *American Immigration*, (Chicago: University of Chicago, 1992), p.277.

III. The Great Change: The *Immigration and Nationality Act of 1965*

In 1964, Congress debated a bill that would dramatically change U.S. immigration. By that time, the Civil Rights Movement had gained significant traction nationwide. The Supreme Court decisions in *Brown v. Board of Education* and the *Civil Rights Act of 1964*, along with influential figures such as Martin Luther King, Jr. and Malcom X, had profoundly affected the United States. The proposed immigration bill, named the *Immigration and Nationality Act of 1965* (or the *Hart-Celler Act*), would contribute to this evolution, and many people were against it. Politicians argued that the proposed act would alter the national identity, and presented evidence that the new system would create a flood of immigrants that would negatively affect the United States. Those who opposed the *Hart-Celler Act* expressed concerns that are still relevant today: overpopulation, labor issues, education, and healthcare. As Republican Vice Presidential candidate William Miller (NY) said:

*“We estimate that if the President gets his way, and the current immigration laws are repealed, the number of immigrants next year will increase threefold and in subsequent years will increase even more ... Shall we, instead, look at this situation realistically and begin solving our own unemployment problems before we start tackling the world's?”*³⁴

William Miller contended that this bill, while not only causing U.S. overpopulation, would ignore U.S. citizens fighting for jobs and prosperity who already resided in the United States. This sentiment is echoed today by many U.S. citizens. There is a growing frustration that too many immigrants are being admitted into the U.S. and that U.S. citizens are not being put first.

³⁴ “Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act,” September 1995, Center for Immigration Studies, <http://cis.org/1965ImmigrationAct-MassImmigration>.

Although opposition to the bill stressed economic and societal concerns over high immigration numbers, those who supported the bill answered with strong, and successful, arguments. Representative Emanuel Celler, a Democrat from New York who co-sponsored the bill, confidently stated:

“With the end of discrimination due to place of birth, there will be shifts in countries other than those of Northern and Western Europe. Immigrants from Asia and Africa will have to compete and qualify in order to get in, quantitatively and qualitatively, which, itself will hold the numbers down. There will not be, comparatively, many Asians or Africans entering this country ... Since the people of Africa and Asia have very few relatives here, comparatively few could immigrate from those countries because they have no family ties in the U.S.”³⁵

Effectively, Representative Celler assured Congress and the American people that the country would not be overtaken by immigrants, and that the bill enhanced the effectiveness of the United States by fostering strong family ties that would last generations. Proponents of the bill also argued that the *Immigration and Nationality Act of 1965* had a deep connection with the Civil Rights Movement. The revolutionary act would not have passed, maybe not even been proposed, without the positive tide of support from the movement. Those in favor of the bill saw it as an extension of the Civil Rights Movement, a further step toward equality. As Philip Burton (D-CA) stated in Congress:

³⁵ Ibid., p.2.

*“Just as we sought to eliminate discrimination in our land through the Civil Rights Act, today we seek by phasing out the national origins quota system to eliminate discrimination in immigration to this nation composed of the descendants of immigrants.”*³⁶

Other Representatives, such as Robert Sweeney (D-OH), agreed. His comparison between the Civil Rights Movement and the abolishment of the quota system was bold, yet resonated through Congress:

*“Mr. Chairman, I would consider the amendments to the Immigration and Nationality Act to be as important as the landmark legislation of this Congress relating to the Civil Rights Act. The central purpose of the administration’s immigration bill is to once again undo discrimination and to revise the standards by which we choose potential Americans in order to be fairer to them and which will certainly be more beneficial to us.”*³⁷

However, the end of discrimination was not the only issue. Opponents to the 1965 bill warned of overpopulation, yet supporters such as Senator Claiborne Pell (D-RI) assured:

*“Contrary to the opinions of some of the misinformed, this legislation does not open the floodgates.”*³⁸

Opponents such as Myra C. Hacker, Vice President of the New Jersey Coalition, testified before the Senate in an immigration subcommittee hearing on grave concerns over the effects the new immigration system would have on U.S. society:

³⁶ Ibid., p.2.

³⁷ Ibid., p.2.

³⁸ Ibid., p.4.

“In light of our 5 percent unemployment rate, our worries over the so called population explosion, and our menacingly mounting welfare costs, are we prepared to embrace so great a horde of the world's unfortunates? At the very least, the hidden mathematics of the bill should be made clear to the public so that they may tell their Congressmen how they feel about providing jobs, schools, homes, security against want, citizen education, and a brotherly welcome ... for an indeterminately enormous number of aliens from underprivileged lands ... Whatever may be our benevolent intent toward many people, [the bill] fails to give due consideration to the economic needs, the cultural traditions, and the public sentiment of the citizens of the United States.”³⁹

As Myra C. Hacker details, overpopulation was but one of the concerns. Opponents presented much deeper issues that included the possibility of detrimental effects to education, national security, and jobs. However, her opposition and that of others, was ineffective and the bill was passed. Although she was defeated, the words of Myra C. Hacker mirror arguments made today. There are concerns over the effects of immigration on the U.S. economy and workforce, and a growing sentiment that immigration should be halted until, as Myra Hacker put it in 1965, “*due consideration to the economic needs ... of the citizens of the United States*” are put first and improved to a standard where immigration can begin again.

As the opposition to the *Immigration and Nationality Act* predicted, the bill created a flood of immigrants from Asia and Latin America. How could President Lyndon B. Johnson and the supporters of the *INA* be so off the mark? The answer is that they could never have foreseen the future “push factors” of Latin America or a United States loss in Vietnam. Even when today’s Congress considers immigration reform, they cannot envision without a doubt that

³⁹ Ibid., p.5.

Mexico's economy, for example, will remain at the status quo. Therefore, reform is subject to unforeseen historical events; and a provision that might have been beneficial when the bill was passed, could end up causing several unintended consequences.

A. The Passage of the *Immigration and Nationality Act of 1965*

*“This bill that we will sign today is not a revolutionary bill. It does not affect the lives of millions. It will not reshape the structure of our daily lives, or really add importantly to either our wealth or our power ...”*⁴⁰

- President Lyndon B. Johnson

The *Immigration and Nationality Act (INA) of 1965* was an extraordinary reversal of an immigration system passed 41 years earlier. Congress did not merely tweak provisions or amend what was missing in the *Immigration Act of 1924*; they started from scratch, challenging and eliminating earlier racial, ethnic, and religious discrimination. The White Anglo-Saxon Protestant view of the American character had not been eliminated, but it was removed from U.S. immigration law. The significant changes marked a new chapter in the nation's immigration history as priority was now given to “family reunification” and a new merit-based “labor force needs” system. The door was opened to Latin Americans, Asians, and Africans; and those once restricted could now enter contingent on their family network and the level that their abilities — not their race, ethnicity, or religion — demonstrated. The melting pot of America was about to change.

⁴⁰ Ibid., p.1.

In the year 2014, the *Immigration and Nationality Act of 1965* continues its revolutionary impact on the United States of America and its millions of citizens. President Lyndon B. Johnson did not predict the future correctly, and the Congress that wrote the *INA* bill did not foresee its incredible significance for the United States. Before the *Hart-Celler Act*, immigration totaled 10 percent of the population increase of U.S. ethnic and racial minorities, as defined by the U.S. Census Bureau; however, by 2010 it was 36.6 percent.⁴¹ Similarly, the non-Hispanic White population in the United States had decreased from 75 percent in 1965 to 63.4 percent in 2011.⁴² Evidently, immigration has played a major role in the cultural structures of the United States, and its significance has continued to grow. Contemporary U.S. immigration issues can be traced back to the *Hart-Celler Act* and decisions made after its passage. Why was the *Hart-Celler Act* shaped in the way it was? The United States had to correct discriminatory practices and improve family-based immigration.

B. The Changes

The 1965 *INA* was intended to purge U.S. immigration of its racist intent by replacing the old quotas with a new system that allocated visas according to a neutral preference system based on family reunification and workforce needs. There were several important changes from the quota system that constituted the new, family connection and merit-based labor shortage system. The bill emphasized that reuniting immigrants with their families would mean a better family structure in the United States, therefore promoting generations of workers and economic

⁴¹ "USA QuickFacts from the U.S. Census Bureau," June 2013, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/00000.html>.

⁴² *Ibid.*, p.1.

stability. The family reunification system has two parts (still used today): a non-quota preference and a quota preference. Spouses and minor children of U.S. citizens, non-quota immigrants, are not counted against the overall immigration cap, yet those who fall under the quota-preference are. The four tiers based on quota preferences that make up family reunification applicants are: (1) unmarried adult children of U.S. Citizens (cap of 23,400); (2) spouses and unmarried children of Legal Permanent Residents (LPRs) (114,200); (3) children of U.S. Citizens (23,400); (4) siblings of U.S. citizens (65,000). U.S. citizens or LPRs must “initiate the sponsorship of their qualifying family member by filing an immigrant visa petition on their behalf by mail with the appropriate Service Center of the U.S. Citizenship and Immigration Service (USCIS).”⁴³ The bill also created a merit-based workforce shortage system to create competition in areas which labor was needed, thereby increasing the level of those accepted. This was intended to lead to a better contribution by immigrants in the workforce, a raise in the level of the workforce as a whole, and an advancement in the U.S. economy.

The act allocated 170,000 visas to countries in the Eastern Hemisphere and 120,000 to countries in the Western Hemisphere.⁴⁴ Therefore, the total immigration ceiling was 290,000 immigrants per year, almost doubling the quota system ceiling of 150,000 set forth by the *Immigration Act of 1924*. Furthermore, each country in the Eastern Hemisphere was allotted 20,000 visas. In contrast, Western Hemisphere countries had no per-country limit. The act also dictated that non-quota immigrants and immediate relatives (i.e., the relatives of U.S. citizens

⁴³ Patricia Hatch, *U.S. Immigration Policy: Family Reunification*, (Washington, D.C.: League of Women Voters, 2007), p.2.

⁴⁴ “The Immigration Act of 1965,” April 2008, U.S. Department of State, <http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080423214226eafas0.9637982.html#axzz2uoxVzlhT>.

include the non-native spouses of U.S. citizens, unmarried minor children under the age of 21 of U.S. citizens, orphans adopted by U.S. citizens, and the parents of U.S. citizens over the age of 21) were not to be counted as part of either the hemispheric or per country ceiling. These non-quota immigrants accounted for 443,035 of the 675,178 immigrants admitted in 2001.⁴⁵

The *INA* created a seven-category preference system for quota immigrant visa admissions detailed in the law (modified in 1990) and was as follows⁴⁶:

1. Unmarried children of U.S. citizens under the age of 21.
2. Spouses and adult children over the age of 21 of permanent residents.
3. Professionals, scientists, and artists “of exceptional ability”
4. Married children over the age of 21 (and their spouses and children) of U.S. citizens.
5. Siblings over the age of 21 of U.S. citizens (and their spouses and children).
6. Skilled and unskilled workers in occupations for which there is insufficient labor supply.
7. Refugees given conditional entry or adjustment

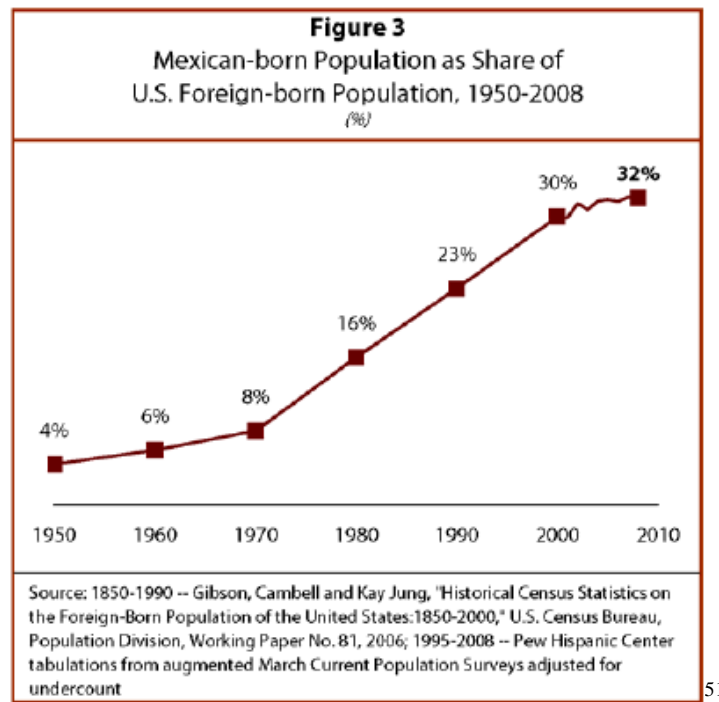
C. The Impact of the *INA* and the Unintended Consequences

Over the last five decades, the policies set forth by the *INA* have dramatically changed the demographic makeup of the United States, as immigrants that entered the United States under the new provisions came increasingly from Asia, Latin America, Africa, and the Middle East. More

⁴⁵ Ramah McKay, “Family Reunification,” May 2003, Migration Policy Institute, <http://www.migrationpolicy.org/article/family-reunification/>.

⁴⁶ “Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act,” September 1995, Center for Immigration Studies, <http://cis.org/1965ImmigrationAct-MassImmigration>.

than half of all immigrants in the 1950s were Europeans, whereas just six percent were Asian; but by the 1990s, 16 percent were Europeans and 31 percent were of Asian descent.⁴⁷ Countries that were once completely shut out from U.S. immigration, such as the Philippines, Korea, India, and Vietnam, saw anywhere from 700,000 to 1.4 million immigrants accepted into the United States from 1965 to 2000.⁴⁸ From 1900 to 1920, Mexico represented seven percent (1,112,286) of the total number of immigrants; but by 2010, Mexico had the highest percentage for a single country to the U.S. at 32 percent.^{49 50}



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⁴⁷ "U.S. Immigration Since 1965," 2010, A&E Television Networks, <http://www.history.com/topics/us-immigration-since-1965>.

⁴⁸ Ibid., p.2.

⁴⁹ John P. Schmal, "Mexican Immigration in the Early Years: Helping to Build America's Railroads," February 2005, HispanicVista Columnists, <http://www.hispanicvista.com/hvc/Columnist/jschmal/020705jschmal.htm>.

⁵⁰ "Mexican Immigrants in the United States," April 2009, Pew Hispanic Center, <http://pewhispanic.org/files/factsheets/47.pdf>.

⁵¹ Ibid., p.2.

In 1976, Congress passed amendments to the *INA* to slow surging immigration from Mexico. Since the passage of the *INA* in 1965, Mexico's percentage of total immigration to the U.S. had risen six percent, and Congress believed that this would continue to increase dramatically.⁵² There were two major amendments to the *INA* in 1976 aimed at slowing down Mexican immigration: First, the seven-category preference system, previously applied to Eastern Hemisphere countries, was extended to include all Western Hemisphere countries. Second, there was an imposition of an annual ceiling of 20,000 immigrants for each country in the Western Hemisphere.⁵³ This marked a significant change from the law's original uncapped visa provision. Similarly, in 1978, Congress passed an amendment which took the two hemispheric ceilings and combined them into one ceiling of 290,000 immigrants per year.⁵⁴ This amendment, which was fair in theory, missed key variables such as: the distance of the country, its population, and most importantly, the differences in "push-pull" factors of each country. For example, the immigration demand from Argentina is far less than that of Mexico. Therefore, due to the immigration system amendments passed in 1978, Mexican immigration would begin to have long backlogs of people waiting to be granted a visa while countries like Argentina did not fill its visa quota. These amendments made by Congress attempted to stop Mexico, or any other country, from creating an imbalance in immigration distribution; nevertheless, the amendments only created unintended consequences. The *Hart-Celler Act* contributed to increased illegal immigration from Latin America, especially Mexico, due to issues with crucial provisions. The

⁵² Ibid., p.2.

⁵³ "Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act," September 1995, Center for Immigration Studies, <http://cis.org/1965ImmigrationAct-MassImmigration>.

⁵⁴ Ibid., p.7.

largest problem comes from the system of family-based immigration, the key provision of the bill put in place in 1965.

The family-based preference system in the *Immigration and Nationality Act* induced a process called “chain migration.” “Chain migration” causes intensified effects of previous arrivals which leads to an overall strong and continuous inflow of immigration streams from specific countries.⁵⁵ “Over time ... entire families have reestablished themselves in the United States.”⁵⁶ The family-based immigration provision in the *Hart-Celler Act* created incentives for immigrants to recruit family members and for that family to establish itself in the United States. This in turn eliminated the incentive for migrants to return home. As Historian Otis Graham stated:

*“Family reunification puts the decision of who comes to America in the hands of foreigners. Those decisions are out of the hands of the Congress — they just set up a formula and its kinship. Frankly, it could be called nepotism.”*⁵⁷

Otis Graham uses the term *nepotism*, which refers to the practice by people in power to favor relative or friends, to explain the way in which the family reunification system facilitates power to foreigners. As previously stated, non-quota family-based immigrants made up nearly 66 percent of all immigrants admitted in 2001.⁵⁸ These immigrants decide when they want to emigrate, and the family reunification system gives top priority to them. Scientists and other

⁵⁵ Timothy J. Hatton, *American Immigration Policy: The 1965 Act and Its Consequences*, (Canberra: Australian National University and University of Essex, 2012), p.11.

⁵⁶ Jennifer Ludden, “1965 Immigration Law Changed Face of America,” May 2006, National Public Radio, <http://www.npr.org/templates/story/story.php?storyId=5391395>.

⁵⁷ Ibid., p.1.

⁵⁸ Ramah McKay, “Family Reunification,” May 2003, Migration Policy Institute, <http://www.migrationpolicy.org/article/family-reunification/>.

well-educated professionals are a lower priority than the first two categories of family reunification on the preference list. This demonstrates that the United States does not control the demographic of its immigration system, but that families do.

Before the *Immigration and Nationality Act* was passed, illegal immigration levels were low. Mexico and other Central American countries did not have the same “push factors” that cause high immigration levels today; and European immigrants coming to the United States by sea had a much harder time illegally entering through a port than passing a border on land. The system has not been adapted to an evolving immigration demand from Latin America. Misappropriated visa caps have not been readjusted, long backlogs still exist, and laws and enforcement against illegal immigrants have only caused those who immigrate illegally to stay. “The Independent Task Force on Immigration and America’s Future reports: ‘The system’s multiple shortcomings have led to a loss of integrity in legal immigration processes. These shortcomings contribute to unauthorized migration when families choose illegal immigration rather than waiting unreasonable periods for legal entry.’”⁵⁹

IV. Mexican and Central American Migration to the U.S.

Migration to the United States from Mexico and Central America has three main periods since the beginning of the twentieth-century: First, the limited migration flows that occurred prior to World War II. Second, the increased *legal* migration flows during and after World War II permitted by the government-sponsored guest worker program (The Bracero Program). Third,

⁵⁹ Patricia Hatch, *U.S. Immigration Policy: Family Reunification*, (Washington, D.C.: League of Women Voters, 2007), p.3.

the mainly *illegal* migration flows that began in 1965 and accelerated thereafter for the next four decades.

A. Pre-World War II: Limited Migration Flows

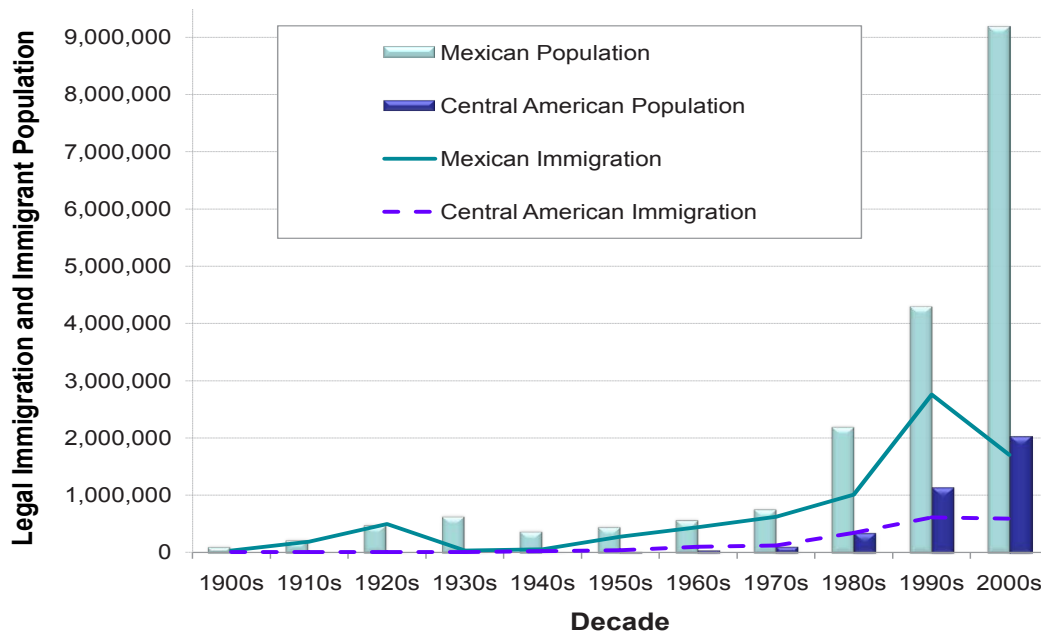
Before World War II, the majority of migration between Central America and the United States consisted of short-term, seasonal flows between central Mexico and the U.S. Southwest. About 60,000 Mexicans entered the United States annually at the turn of the 20th century and returned home in the winter.⁶⁰ Combined with “pulls” of new agricultural and transportation technology, the Mexican Revolution created a “push” that resulted in migration rates more than doubling during the 1910s and again in the 1920s. In addition, the business sector in the Southwest offered strong support for this migration system, which resulted in exemptions from tougher restrictions that Asian and European immigrants had to abide by. However, by the late 1920s, the increasing anti-immigration movement — fortified by the *Immigration Act of 1924* — affected Mexican migrants. Thereafter, U.S. consular officers initiated tougher screenings on Mexican visa applications, generating a 75 percent decline in Mexican inflows between 1928 and 1929.⁶¹ With the beginning of the Great Depression in 1929, the migration inflow was curtailed, and hundreds of thousands of Mexicans were deported to Mexico. During the 1930s, reduced migration inflows and increased removals caused the Mexican population in the United States to fall by 40 percent.⁶²

⁶⁰ Marc R. Rosenblum and Kate Brick, U.S. Immigration Policy and Mexican/Central American *Migration Flows: Then and Now*, (Washington, D.C.: Migration Policy Institute, 2011), p.3.

⁶¹ *Ibid.*, p.3.

⁶² *Ibid.*, p.4.

Figure 1. Legal Permanent Immigration Flows and Total Population of Mexican and Central American Immigrants in the United States, 1900s-2000s



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B. The Bracero Program

During the United States' involvement in World War II (1941-1945) and the Korean War (1950-1953), the United States experienced extreme labor shortages due to the large number of soldiers fighting abroad. The lack of men combined with a substantial demand for factory workers subsequently increased agricultural workforce gaps. To combat these issues, the United States signed a formal agreement with Mexico in 1942 to establish a migrant guest worker program, also known as the Bracero Program. The program's terms on contracts were extremely favorable for Mexican migrants, as they included: "a guaranteed minimum wage (unlike American workers), as well as transportation, housing, and health benefits. Bracero contracts

⁶³ Ibid., p.4.

were cosigned by U.S. and Mexican officials, and Mexican consuls in the United States helped oversee their enforcement.”⁶⁴

With the end of the Korean war and return of American soldiers in 1953, the Eisenhower Administration eliminated consular oversight and imposed better contracts for growers, rather than the Mexican migrants. Additionally, a 1959 study by the Department of Labor persuaded U.S. government officials that the Bracero Program adversely affected domestic farmworkers.⁶⁵ Nevertheless, the Bracero Program remained in place until 1964, when the Kennedy Administration dissolved the plan. By that time, 4.8 million Bracero contracts had been signed; and the Bracero Program had completely changed the limited migration flows — commonplace before World War II — into an expanded demand for low-wage foreign workers throughout the U.S. agriculture sector.⁶⁶ As Marc R. Rosenblum and Kate Brick detail in their report “U.S. Immigration Policy and Mexican/Central American Migration Flows: Then and Now”:

*“As a result, entire communities in Mexico came to rely on emigration as their primary source of employment, and an industry of labor contractors emerged on both sides of the border to match willing workers with employers. Migration was now structurally embedded in the social and economic systems of a growing group of migrant-sending and migrant-receiving communities.”*⁶⁷

The *Immigration and Nationality Act* would change social and economic systems created by the Bracero Program. The bill lacked a strong foreign migration worker program; and the emphasis

⁶⁴ Ibid., p.4.

⁶⁵ Manuel García, *The Bracero Program*, (Texas: University of Texas, 2001), p.1219.

⁶⁶ Marc R. Rosenblum and Kate Brick, U.S. Immigration Policy and Mexican/Central American Migration Flows: *Then and Now*, (Washington, D.C.: Migration Policy Institute, 2011), p.5.

⁶⁷ Ibid., p.5.

on, and priority given to, family reunification had replaced the focus on seasonal migrant labor. This shift to family reunification was the main causal factor behind the most important issue facing the United States immigration system today: illegal immigration.

C. The Rise of Illegal Immigration

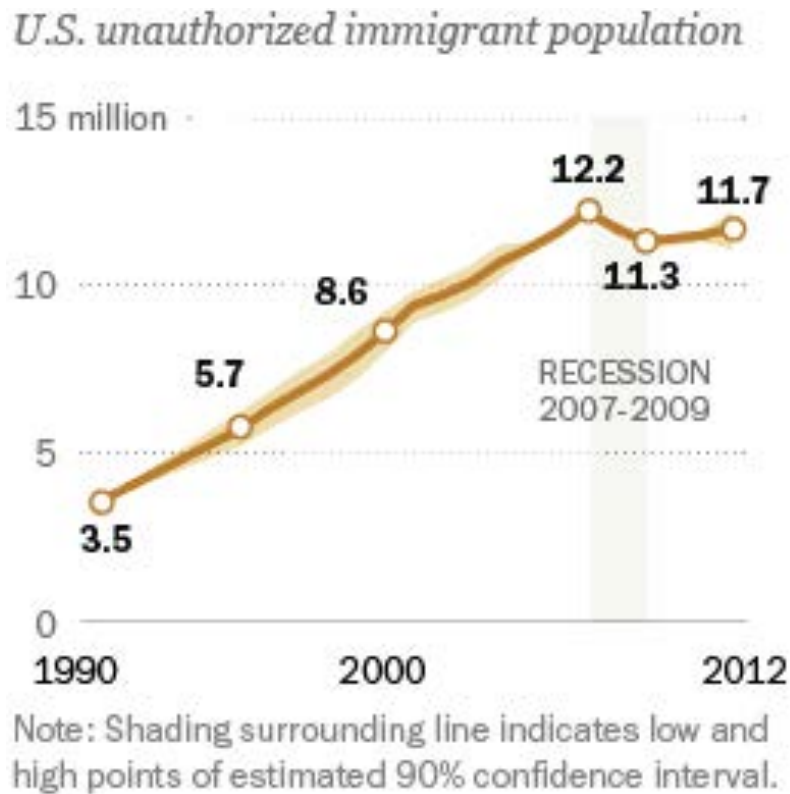
The passage of the *Immigration and Nationality Act (INA)* in 1965 established the basic outline of U.S. immigration policy that remains in place today. This bill negatively affected the structural forces that had already taken hold of the U.S. migration system; and the preference given to family members of U.S. citizens left an inadequate system to provide for employers who needed foreign workers. Furthermore, the “Texas Proviso,” a provision in the *Immigration and Nationality Act of 1952* that had not been removed by the *INA of 1965*, exempted businesses from being liable under the law for hiring unauthorized immigrants. Therefore, there was no disincentive to prevent these employers from hiring unauthorized migrant workers. Similarly, the inflexibility of the per-country limits set forth by the *INA* and the inability of the new preference system to adapt to evolving employer needs created backlogs in areas with labor shortages. Rosenblum and Brick assert that the *INA* “*failed to anticipate massive economic, political, and social changes in Mexico and Central America, along with changes in transportation and communications that reduced the costs of international migration.*”⁶⁸

Economic troubles and Central American civil wars created new “pushes” in the 1970s and 1980s, yet the U.S. government implemented per-country caps and extended the seven-category preference system (detailed on page 26) to Western Hemisphere countries in 1976. These caps

⁶⁸ Ibid., p.5.

were illogical in that they failed to account for the distance of a country, its population, and most importantly, the differences in “push-pull” factors of each country.

The reasons noted above all contributed to the illegal immigration problem that the United States faces today. Despite numerous Congressional hearings from 1971 to 1973, three consecutive executively-ordered task forces, and a five-fold surge of border patrol personnel between 1970 and 1985, the number of unauthorized immigrants residing in the United States increased from 3.5 million in 1990 to 11.7 million in 2012.⁶⁹



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⁶⁹ Jeffrey S. Passel, D'vera Cohn, and Ana Gonzalez-Barrera, “Population Decline of Unauthorized Immigrants Stalls, May Have Reversed,” September 2013, Pew Hispanic Center, <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.

⁷⁰ Ibid., p.1.

*“Mexicans account for about 60 percent of all unauthorized immigrants and Central Americans about 12 percent.”*⁷¹

D. Immigration Reforms

Amidst growing public pressure to act on the increasingly problematic issue of illegal immigration, Congress passed the *Immigration Reform and Control Act (IRCA)* in 1986. The bill legalized undocumented immigrants who entered before January 1, 1982 and continuously lived in the United States so long as the person paid a fine, back taxes due, and admitted guilt. The *IRCA* also imposed new civil and criminal penalties against employers who hired unauthorized workers. Additionally, new funding was allocated to border enforcement. The trend of increased spending on border enforcement continued with the passage of the *Immigration Act of 1990* and the *Illegal Immigration Reform and Immigration Responsibility Act of 1996*.

Just days after the productive talks between President George W. Bush and Mexican President Vicente Fox on a framework agreement for major bilateral migration reform, the terrorist attacks of September 11 occurred. To combat growing fears of national insecurity, the U.S. government passed six laws between 2002 and 2006 focused on a more robust immigration and border enforcement system: the *Homeland Security Act of 2002*, the *Patriot Act of 2002*, the *Enhanced Border Security and Visa Entry Reform Act of 2002*, the *Intelligence Reform and Terrorism Prevention Act of 2004*, the *REAL ID Act of 2005*, and the *Secure Fence Act of 2006*.⁷² The *Immigration Reform and Control Act of 1986* and the *Immigration Act of 1990* each

⁷¹ Marc R. Rosenblum and Kate Brick, U.S. Immigration Policy and Mexican/Central American Migration Flows: *Then and Now*, (Washington, D.C.: Migration Policy Institute, 2011), p.6.

⁷² *Ibid.*, p.6.

authorized the U.S. Immigration and Naturalization Service (INS) (absorbed by the Department of Homeland Security in 2003) to double U.S. spending on border enforcement. In 1986, border enforcement was allotted around \$700 million, but by 2010 it had swelled to \$10.1 billion.⁷³ Similarly, the number of border patrol agents rose from 3,000 agents in 1986 to 20,000 in 2010.⁷⁴ However, augmented border enforcement did not prevent the entry of illegal immigrants. Actually, it “accelerated the net inflow.”⁷⁵ The build up of border enforcement caused the cost and risk for illegal immigrants to increase. Therefore, illegal immigrants minimized their movement, essentially staying put in the United States. This in turn drastically decreased the net outflow of illegal immigrants, which led to the acceleration of undocumented immigrants during the 1990s and 2000s.

V. Immigration Exceptions

Immigration exceptions are an important part of how the U.S. immigration system has been influenced by the sense of national identity. The Pilgrims who left England in search of freedom from religious persecution became the foundation for the independence revolution and eventual establishment of the United States. The acceptance of political refugees has always been an issue which the United States has been sensitive to. After the pain of World War II and the hatred toward communist and totalitarian governments by U.S. citizens, the United States

⁷³ Ibid., p.8.

⁷⁴ Ibid., p.8.

⁷⁵ Douglas S. Massey and Karen A. Pren, “Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America,” *Population and Development Review*, March 21, 2012, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407978/>, p.9.

government came to the consensus that it wanted to help those fleeing such governments.

Cubans were the primary example. The United States aided many elite Cubans after the Cuban Revolution in 1959, and established a streamlined process for their citizenship. When the Vietnam War ended, the United States felt responsible in a different way. The U.S.'s involvement in the war, much like in Iraq and Afghanistan today, created a sense of requirement to accept political refugees. By 1979, there was a growing sentiment that the United States needed to fully commit to the modern reality of refugee situations through a clear national policy. Senator Ted Kennedy proposed a bill that year to reform U.S. refugee policy. His proposal outlined a system that addressed the need for reformed, non need-based policy that did not simply aid people fleeing from communist countries in Eastern Europe or repressive governments in the Middle East. The proposal by Ted Kennedy would eventually be transformed into the *Refugee Act of 1980*. It provided a flexible mechanism to meet fast-changing world conditions as well as a permanent and systematic procedure for the admission of refugees to the United States for special humanitarian situations. The act included comprehensive and uniform provisions that guided the effective resettlement and absorption of those refugees who were admitted.

The *Refugee Act of 1980* profoundly affected the way that exceptions in U.S. immigration policy are handled. The act established a separate admissions policy for refugees, eliminating them from the geographical and ideological criteria set forth by the *INA*. The bill also amended Section 101(a) of the *INA* to define a “refugee” as “any person who is outside of any country of such person's nationality ... who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded

fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”⁷⁶ This definition reflected United Nation standards and advanced a more relaxed and open policy for admitting refugees. The law created a target ceiling for refugees of 50,000, which was separate from the worldwide ceiling.⁷⁷ In addition, the *Refugee Act of 1980* lowered the annual worldwide immigration ceiling from 290,000 to 270,000.⁷⁸ The bill created the Office of Refugee Resettlement and allowed a refugee to adjust his or her status after one year to become a permanent resident, and after four more years, to become a United States citizen. Additionally, there were laws passed to allow the admission of the children of American servicemen who fathered children in Vietnam. Similarly, former political prisoners, such as South Vietnamese soldiers, were allowed admittance into the United States.

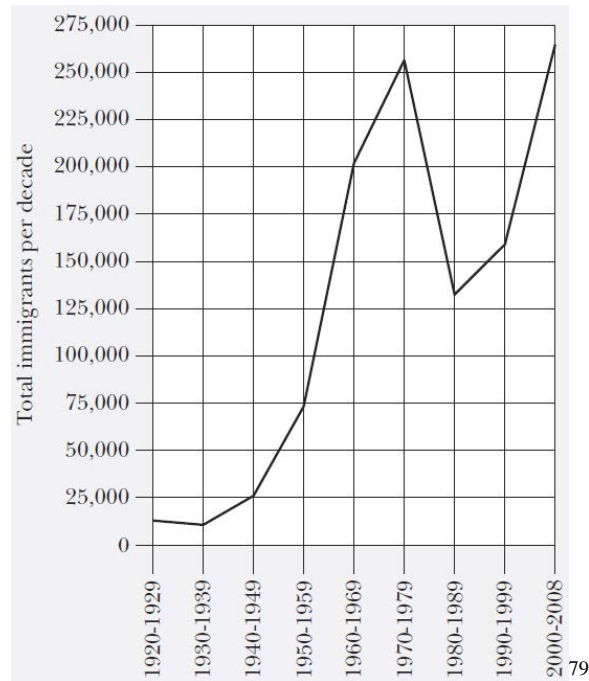
The *Refugee Act of 1980* was extremely important for two major groups: Cubans and Vietnamese. The U.S. immigration policy on refugees from Cuba had been relaxed since the *Cuban Adjustment Act of 1966*; however, this bill completely reversed a trend in a declining number of Cuban admissions to the United States.

⁷⁶ *The Refugee Act* (Pub. L. 96-212) 1980, § 101(a)(42).

⁷⁷ Edward M. Kennedy, “Refugee Act of 1980,” *International Migration Review*, 1981, <http://www.rcusa.org/uploads/pdfs/International%20Migration%20Review,%20Refugee%20Act%20of%201980%20by%20Edward%20M.%20Kennedy,%20Spring%201981.pdf>, p.143.

⁷⁸ *Ibid.*, p.143.

Cuban Immigrant Admissions (1920-2008)



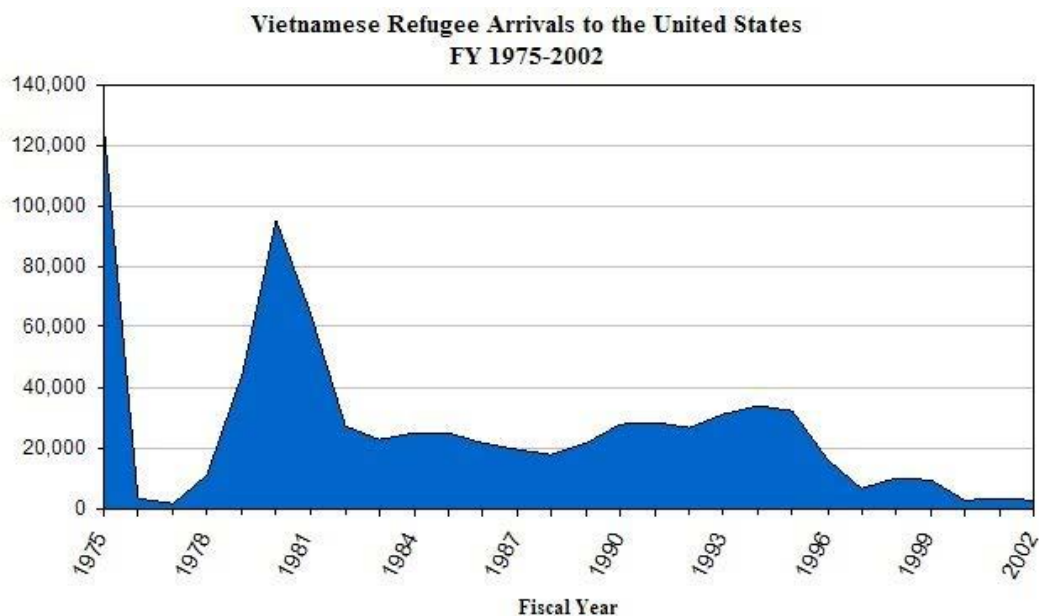
As the chart above shows, there was a sharp spike in Cuban immigration following the *Refugee Act of 1980*. Vietnamese refugees showed the same spike in immigration to the United States.

The “Fall of Saigon” in 1975 marked the end of the Vietnam War. The United States military was defeated in its attempt to aid South Vietnam in stopping the communist regime from taking over South Vietnamese territory. South Vietnamese soldiers, translators, and spies who had aided American forces during the war feared there would be consequences by the communist regime. Over 100,000 Vietnamese refugees departed for the United States as part of “Operation New Life” and “Operation Babylift.” Operation “New Life” was a mass evacuation of Southeast Asian refugees; and Operation “Baby Lift” was a large-scale removal of children from South Vietnam. The Ford Administration supported the arrival of these Vietnamese refugees and

⁷⁹ “Cuban Immigrants,” September 2011, Immigration in America, <http://immigrationinamerica.org/453-cuban-immigrants.html>.

gathered enough backing from Congress to pass the *Indochina Migration and Refugee Assistance Act of 1975*. After the initial influx in admittance of refugees to the United States following the “Fall of Saigon” in 1975, Vietnamese refugees had been restricted heavily. However, with the passage of the *Refugee Act* in 1980, the restrictions on entry were eased by the United States. In total, the United States accepted 531,310 refugees from Vietnam between 1981 and 2000.⁸⁰

Vietnamese Refugee Admissions (1975-2002)



Source: Southeast Asia Resource Action Center, Southeast Asian American Statistical Profile. Washington, DC: 2004, p. 10.

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The *Refugee Act of 1980* reduced constraints to permit entry to Vietnamese citizens attempting to escape the communist regime over fears of consequences for their aid to the United States during the Vietnam War. This included soldiers, translators, spies, or anyone who aided the United States militarily. Many South Vietnamese, especially former military officers and government

⁸⁰ Marc Povell, “The History of Vietnamese Immigration,” June 2005, The American Immigration Law Foundation, http://www.aifl.org/awards/benefit2005/vietnamese_essay.shtml.

⁸¹ Jonathan Bui, “What Will Happen to Undocumented Immigrants if Romney Wins?” September 2012, WordPress.com, <http://election2012ucd.wordpress.com/2012/09/16/what-will-happen-to-undocumented-immigrants-if-romney-wins/>.

employees, were sent to communist “reeducation camps” during this time. Those that were fortunate enough to escape became known as the “boat people.” Many Vietnamese crowded small and unsafe fishing boats in a desperate attempt to escape persecution. Most of these Vietnamese escaping by boat likely ended up in refugee camps in Thailand, Malaysia, Singapore, Indonesia, Hong Kong, or the Philippines. However, the 1980 *Refugee Act* was not the only legislation that showed exception in the treatment of refugees. Cubans have had their own refugee policy as part of the U.S. immigration system, and received preferential treatment unlike any other group.

Both Cuba and Haiti have a history of repressive governments with numerous human rights violations. Asylum seekers have come to the United States from both countries by boat and by plane. Despite these similarities, there have been several factors that have led to different policy enactments by the United States toward each country. There are four main reasons Cuban refugees receive different treatment than Haitians: First, the interest groups consisting of Cuban-Americans in the United States have deep roots in local and national political activity. Their lobbying to members of Congress from Florida have especially important consequences due to their extensive influence in Miami. Second, Castro allowed many of the elites of Cuba to leave once his communist government had taken over. Consequently, many Cubans have family ties in the United States that Haitians would not have. The United States government is more inclined to accept a Cuban under its family-based admissions immigration policy than start a lone Haitian in a new country. Third, the United States has shown favor to refugees who are fleeing from political persecution (the vast majority are fleeing from communism) over those fleeing due to economic issues. Fourth, the level of education in Cuba is much higher than in Haiti. Lower

education among Haitians creates concern by U.S. politicians that they may not be able to support themselves or contribute to U.S. society in a significant way. This affects the decisions by the U.S. government when applying the second most important standard of the immigration policy set forth by the *Immigration and Nationality Act of 1965*: merit-based labor shortage acceptance. These four factors provide a basis for why Cubans have undoubtedly received preferential treatment in admissions to the U.S., while Haitians have been consistently turned away.

In 1966, Congress passed the *Cuban Adjustment Act (CAA)* which guarantees that Cubans living in the U.S. after January 1, 1959 for at least one year may move to permanent residence status. This was the first of many attempts by the United States to grant Cubans the opportunity to become U.S. citizens. While attaining lawful permanent residency so quickly as a guarantee is an exception in itself, the greatest exception lies in the fast track to U.S. citizenship that Cubans are put on. Once a Cuban has attained permanent residence status, they would be allowed to obtain American citizenship five years later. This path to citizenship is much less difficult than the process other immigrants face.

The CAA was passed during the Cold War with the rise of communism in the Soviet Union and other Soviet-influenced countries. The United States was committed to fight against communism; and the Soviet Union had aided Cuba heavily during the Cold War. After the 1959 Cuban revolution, private property, including businesses, were seized by the communist government. The Cuban elite, along with supporters of the fallen Batista government, were scared of impending persecution. These well-established Cuban professionals, including many doctors and business executives, fled for Miami and New York City. This arrival is considered

the first of four major waves of Cuban refugees. The U.S. refugee policy began to mimic the anti-communism sentiment and embraced foreign citizens of a communist state seeking asylum. The United States sought to streamline its refugee acceptance process and help the “humanitarian” fight against political persecution. Since then, hundreds of thousands of Cubans have been given the same fast track opportunity the CAA outlines.

The Cuba-United States Migration Agreement of 1995 was created to control the great number of Cuban refugees seeking asylum in the United States. Cuba and the United States created a fixed limit to allow 20,000 immigrants each year (not counting relatives of U.S. citizens). In addition, Cubans intercepted at sea would now be repatriated instead of put in safe-haven camps. The *Cuban Adjustment Act* would be amended in 1996 to adopt the “wet foot/dry foot” practice. The policy, using the Migration Agreement of 1995 as a model, states the following: if a Cuban is found at sea, they are returned to Cuba unless they profess sufficient fears of persecution. If a Cuban effectively reaches the shore of the United States, they are inspected for entry and permitted to stay for one year (under the CAA). Similarly, if a Cuban enters the U.S. by land, usually through Mexico, Customs and Border Protection can give an exemption from deportation.

These immigration exceptions hurt the entire U.S. refugee policy. The inconsistent treatment of different groups creates problems when deciding how to approach each refugee. The United States government has not kept a formal and consistent policy that is fair for all parties seeking asylum; and refugee resettlement is one of many parts of United States immigration policy that needs reform.

VI. Transition to Contemporary: The Issues of the U.S. Immigration Policy

“Despite the overall increase in legal immigration channels since the 1970, admissions of legal permanent residents (LPRs) and temporary legal immigrants has not kept pace with the push factors in Mexico, Central America, and other countries of origin, or with family- and employment-based pull factors within the United States.”⁸²

This quote depicts the greatest problem of the U.S. immigration system today: inadequate visas to cover the push-pull factors between Central America and the United States. Legal immigration channels are misallocated, inefficient, and require reform. The next chapter will detail how the current immigration policy functions, as well as present the statistics for each part of the immigration system. An examination of current policy will help illustrate the issues contemporary United States is facing. Trillions of dollars are at stake as immigration policy affects several aspects of America’s culture and economic structure. An understanding of contemporary issues is essential to formulate reform that will positively affect the United States for several years in the future.

⁸² Ibid., p.13.

CHAPTER III: The Current Immigration System

Policies, Statutes, and Salient Issues

I. Contemporary Complications

Contemporary immigration issues and their causal factors are relevant for the prosperity of the United States. The history of United States immigration has been full of unintended consequences. How did the immigration system allow more than 11 million people to enter illegally into the United States? Clearly immigration reform efforts have missed the mark. This chapter will provide an analysis of the current issues in order to prevent another misguided reform effort. The federal government has expended an exorbitant amount of money to prevent unauthorized inflows of immigrants; however, the failure to do so has presented serious issues for the United States.

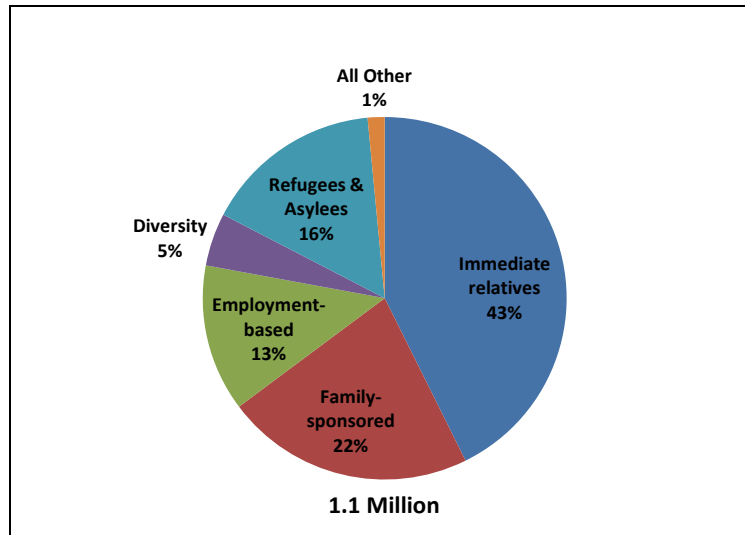
In Fiscal Year (FY) 2011, over one million aliens became Legal Permanent Residents (LPRs). An LPR is defined as: “any person not a citizen of the United States who is residing in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant.”⁸³ Sixty-five percent of the LPRs admitted in FY2011 entered on the basis of family ties.⁸⁴ Employment-based LPRs accounted for 13 percent, refugees totaled 16 percent, and diversity migrants represented 5 percent.⁸⁵

⁸³ Ruth Ellen Wasem, *Permanent Legal Immigration to the United States: Policy Overview*, (Washington, D.C.: Congressional Research Service, 2012), p.1.

⁸⁴ *Ibid.*, p.1.

⁸⁵ *Ibid.*, p.1.

Figure 4. Legal Permanent Residents by Major Category, FY2011



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Immediate relatives of U.S. Citizens, defined by the *Immigration and Nationality Act of 1965* to not count against the family-based immigration quota, accounted for 43 percent of all LPRs in FY2011.⁸⁷ Immigrants included in this category are: the non-native spouses of U.S. Citizens (57% in FY2011), unmarried minor children under the age of 21 of U.S. Citizens and orphans adopted by U.S. Citizens (18% in FY2011), and the parents of U.S. citizens over the age of 21 (25% in FY2011).⁸⁸ The remaining percentage of family-based immigrants are those which the *INA* deems outside the immediate nucleus of the family — i.e. siblings. Mexico had the highest number of its citizens become LPRs in FY2011 (14%).⁸⁹ China (8.2%), India (6.5%), the Philippines (5.4%), and the Dominican Republic (4.3%) were the four other countries with

⁸⁶ Ibid., p.8.

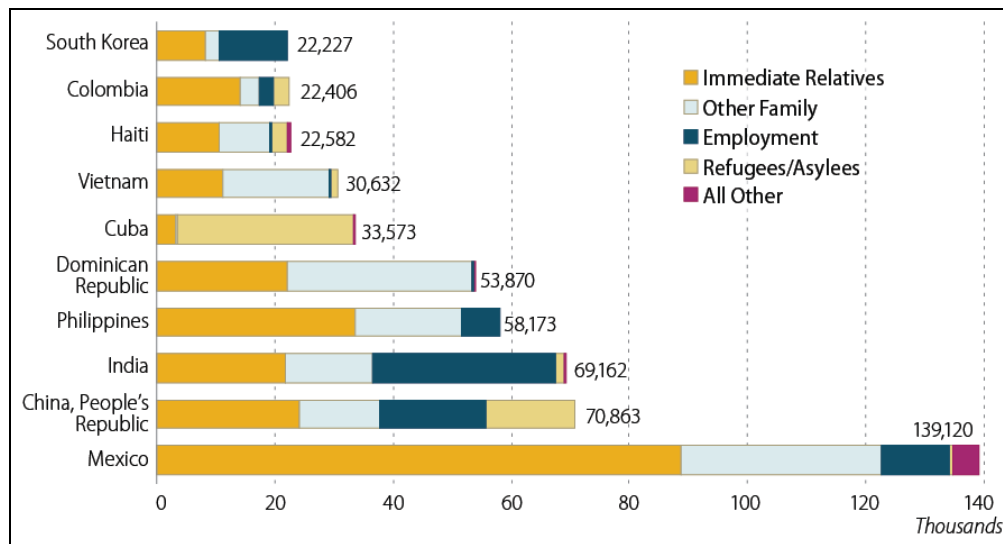
⁸⁷ Ibid., p.8.

⁸⁸ Ibid., p.8.

⁸⁹ Ibid., p.8.

the highest population becoming LPRs.⁹⁰ China, Mexico, and India exceeded the per-country ceiling for preference immigrants due to provisional exceptions outlined in the *Immigration and Nationality Act of 1965*. Mexico, for example, eclipsed its cap as a result of a provision that permits 75 percent of the family second preference (spouses and adult children over the age of 21 of permanent residents) to exceed the per-country ceiling.

Figure 6. Top Ten LPR-Sending Countries, FY2010



Source: CRS presentation of FY2010 data from the DHS Office of Immigration Statistics.

The top 10 immigrant-sending countries depicted in **Figure 6** accounted for over half of all LPRs in FY2009. The top 50 immigrant-sending countries contributed 86% of all LPRs in FY2009.

Appendix A provides detailed data on the top 50 immigrant-sending countries by major category of legal immigration.

⁹⁰ Ibid., p.8.

⁹¹ Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions*, (Washington, D.C.: Congressional Research Service, 2012), p.11.

II. The Current System

Four major principles guide the United States immigration system on permanent immigration: First, reunify families. Since the passage of the *Immigration and Nationality Act of 1965 (INA)*, the United States government has put an emphasis on family reunification as a means to build generational benefits for the country. Second, admit immigrants with needed skills. Immigrants with doctorates and masters, or those who fill needed areas in the U.S. labor force are welcomed in an attempt to improve the overall workforce and the economy. Third, protect refugees. The *INA* provided conditional entry or adjustment, and the emphasis on accepting refugees has continued. Fourth, diversify the admission of immigrants by country of origin. When Congress passed the *INA* in 1965, the congresspeople who wrote and voted for the bill did not understand the impact immigration would have over time. As written in the previous chapter, Republican Vice Presidential candidate William Miller (NY) — amongst others — contended:

*“We estimate that if the President gets his way, and the current immigration laws are repealed, the number of immigrants next year will increase threefold and in subsequent years will increase even more ... Shall we, instead, look at this situation realistically and begin solving our own unemployment problems before we start tackling the world's?”*⁹²

Although William Miller was incorrect in terms of immigrants increasing “threefold,” he was accurate in his prediction that the *INA* would cause a flood of immigrants. William Miller’s concern that the United States should not focus on immigration but on its own employment issues first is not as simple today as it was in 1964. Immigration has become a significant factor

⁹² “Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act,” September 1995, Center for Immigration Studies, <http://cis.org/1965ImmigrationAct-MassImmigration>.

in the U.S. economy and workforce, and reform is needed to modernize the immigration process. The preference shown to family members in the current system — created by the *INA* over 40 years ago — has caused enormous backlogs due to misappropriated visa caps, and more importantly contributed to an enormous inflow of illegal immigrants. Due to the non-quota family-based visa (Non-native spouses of U.S. citizens, unmarried minor children under the age of 21 of U.S. citizens, orphans adopted by U.S. citizens, and the parents of U.S. citizens over the age of 21), entire families have migrated to the United States without counting against any family-based visa caps.

There are two types of legal aliens: immigrants and nonimmigrants. Immigrants are defined in the *INA* as: “synonymous with legal permanent residents (LPRs) and refer to foreign nationals who come to live lawfully and permanently in the United States.”⁹³ Nonimmigrants include: tourists, foreign students, diplomats, temporary agricultural workers, exchange visitors, or intracompany business personnel who are “admitted for a specific purpose and a temporary period of time.”⁹⁴ They are required to leave the country when their visas expire, but some classes of nonimmigrants may adjust to LPR status if they otherwise qualify. Those who acquire LPR status may apply to become a U.S. citizen through the process of “naturalization.” Persons who have held LPR status based on marriage generally wait for three years before they can become a U.S. citizen. If LPR status was gained based on any other reason, that person must wait for about five years. If a LPR wishes to begin the process of “naturalization,” they may begin the process one year before their three-year or five-year date. While a LPR may decide to

⁹³ Ruth Ellen Wasem, *U.S. Immigration Policy on Permanent Admissions*, (Washington, D.C.: Congressional Research Service, 2012), p.1.

⁹⁴ *Ibid.*, p.1.

go through the process of “naturalization,” it is not required of them; and they may change their mind at any point in the process.

III. Family-Based Immigration

According to the *Immigration and Nationality Act of 1965*, family reunification is the top priority. The *INA* created a single non-quota category of family-based immigration and a seven-category preference system for all quota immigrant visa admissions. Non-native spouses of U.S. citizens, unmarried minor children under the age of 21 of U.S. citizens, orphans adopted by U.S. citizens, and the parents of U.S. citizens over the age of 21 were not to be counted as part of either the hemispheric or per country ceiling. The quota-based preference list was as follows:

- First preference: Unmarried children of U.S. citizens under the age of 21.
- Second preference: Spouses and adult children over the age of 21 of permanent residents.
- Third preference: Married children over the age of 21 (and their spouses and children) of U.S. citizens.
- Fourth preference: Siblings over the age of 21 of U.S. citizens (and their spouses and children).

As stated before, the *INA* established a policy of putting family-based immigration first. The spouses and children of prospective LPRs receive the same status and the same order of consideration as the principal applicant, if accompanying or following to join. However, the high number of applications due to an emphasis on family-based immigration has exceeded the allotted visa numbers, creating extensive backlogs.

Relatives of U.S. citizens and LPRs are caught in visa backlogs for several years. In the 2013 report by the Department of State, brothers and sisters of U.S. citizens had been waiting over eleven years; and in the case of those from Mexico and the Philippines, it was even longer.⁹⁵ The following table demonstrates the long wait for family members. “Priority date” refers to the day the petition was filed; and for the unmarried adult sons and daughters of U.S. citizens from the Philippines who filed petitions on October 8, 1997, their processing date was in 2012.

Table 3. Priority Dates for Family Preference Visas, as of December 2012

Category	Worldwide	China	India	Mexico	Philippines
Unmarried sons and daughters of citizens	Dec. 1, 2005	Dec. 1, 2005	Dec. 1, 2005	July 1, 1993	Oct. 8, 1997
Spouses and children of LPRs	Aug. 22, 2010	Aug. 22, 2010	Aug. 22, 2010	Aug. 1, 2010	Aug. 22, 2010
Unmarried sons and daughters of LPRs	Nov. 15, 2004	Nov. 15, 2004	Nov. 15, 2004	Nov. 1, 1992	Mar. 22, 2002
Married sons and daughters of citizens	June 8, 2002	June 8, 2002	June 8, 2002	Mar. 1, 1993	Aug. 1, 1992
Siblings of citizens age 21 and over	April 1, 2001	April 1, 2001	April 1, 2001	July 22, 1996	Mar. 22, 1989

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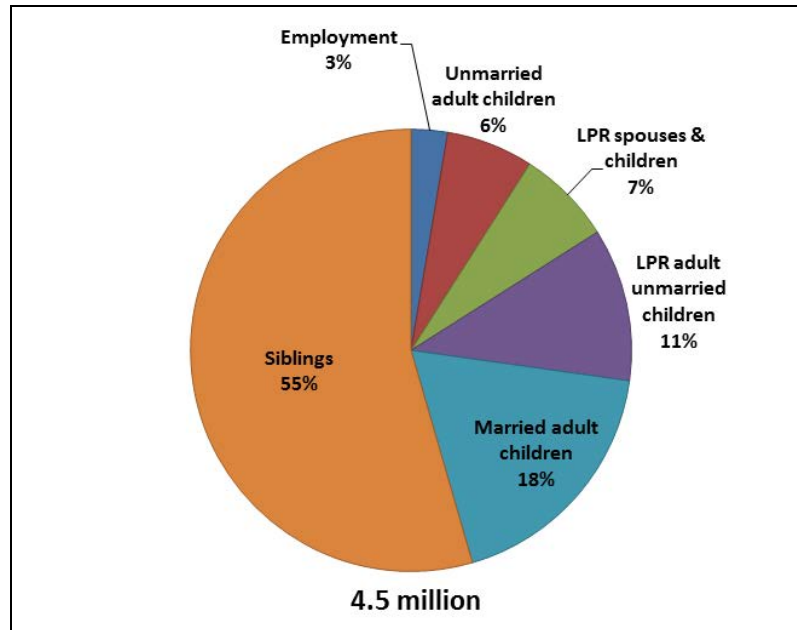
Those wishing to immigrate from the Philippines must wait longer than those from China because more applications are received over the visa cap from the Philippines set by Congress each year through the *INA*. The number of applicants to become LPRs who meet the eligibility requirements typically exceed the worldwide level determined by U.S. immigration law. The backlogs formed at the end of each fiscal year are published by the Department of State with the National Visa Center. To emphasize the effect family-based immigration has had on the

⁹⁵ Ibid., p.1.

⁹⁶ Ruth Ellen Wasem, *Permanent Legal Immigration to the United States: Policy Overview*, (Washington, D.C.: Congressional Research Service, 2012), p.11.

immigration system as a whole, family-based preference categories constituted 97 percent of the visa petitions pending at the end of FY2011.⁹⁷

Figure 5. Approved LPR Visa Petitions Pending November 2011



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In 2013, Section 201 of the *INA* limits family-sponsored immigrant visas to 226,000.⁹⁹ Under Section 202 of the *INA*, the per-country limit on preference visas for FY2013 was 26,660.¹⁰⁰ This is where family-based immigrations becomes problematic. A country such as Argentina is given the same visa cap as Mexico. Therefore, when Mexico exceeds its limit and Argentina does not come close to the cap, there is no way to shift those leftover visas to Mexican applicants. This is the origin of extremely long backlogs.

⁹⁷ Ibid., p.10.

⁹⁸ Ibid., p.10.

⁹⁹ Ibid., p.3.

¹⁰⁰ Ibid., p.3.

Although the applicants that are placed in backlogs are put in the back of the line, the consular procedures require the removal of visas that are determined to be unlikely to see further action. This is done to prevent unreasonably inflated numbers. “If, for example, a consular post receives no response within one year from an applicant to whom the visa application instruction letter (i.e., the consular Instruction Package) is sent when the movement of the visa availability cut-off date indicates a visa may become available within a reasonable time frame, the case is considered ‘inactive’ under the consular procedures and is no longer included in waiting list totals.”¹⁰¹ The following list details the twelve countries with the highest number of waiting list registrants in FY2013. In total, these countries represent 77 percent of all applicants waiting to be admitted into the United States.

Country	Applicants
Mexico	1,316,118
Philippines	462,145
India	332,846
Vietnam	267,281
China-mainland born	240,637
Dominican Republic	169,422
Bangladesh	161,896
Pakistan	115,903
Haiti	106,312
Cuba	87,485
El Salvador	77,107
Jamaica	61,204
<u>All Others</u>	<u>1,014,337</u>
Worldwide Total	4,412,693

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Mexico continues to have the highest percentage on this waiting list at 32.3 percent. Therefore, the worldwide total is 265,305 above the allotted cap. The overwhelming amount of applications

¹⁰¹ *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based Preferences Registered at the National Visa Center*, (Washington D.C.: Department of State, 2013), p.3.

¹⁰² *Ibid.*, p.3.

stems from an over 40 year-old system that puts family-based immigration first. The issue of backlogs also causes problems with illegal immigration, but is more prominent in Central American countries. This is due to their close proximity to the United States, whereas immigrants from India or China are much farther away. The issue of illegal immigration will be discussed in further detail later in this chapter. The following chart breaks down the top countries with the highest first-preference percent on the waiting list for family-based immigration.

<u>Country</u>	<u>Family First Preference Total</u>	<u>Percent of Category Waiting List</u>
Mexico	93,431	32.3%
Philippines	23,723	8.2%
Dominican Republic	21,670	7.5%
Jamaica	18,689	6.5%
Haiti	16,119	5.6%
El Salvador	8,307	2.9%
Guyana	8,231	2.8%
Cuba	7,677	2.6%
Vietnam	7,140	2.5%
Colombia	6,013	2.1%
All Others	77,705	27.0%
Total	288,705	100%

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For second preference family applicants (Spouses and adult children over the age of 21 of permanent residents), there are 114,200 visas available for FY2013. Family 2A applicants are the spouses and children of permanent residents of the United States and 2B applicants are adult unmarried sons or daughters of permanent residents. Once again, Mexico's percentage is vastly higher than any other country. This trend is apparent throughout the family-based backlog

¹⁰³ Ibid., p.11.

analysis. This category is over 500,000 applicants above the cap. Each preference going down the list has more of a backlog than the previous category.

<u>Country</u>	<u>Family 2A Preference Total</u>	<u>Percent of Category Waiting List</u>
Mexico	88,054	40.0%
Dominican Republic	25,053	11.4%
Cuba	13,801	6.3%
Haiti	11,715	5.3%
Philippines	9,615	4.3%
All Others	72,075	32.7%
Total	220,313	100%

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<u>Country</u>	<u>Family 2B Preference Total</u>	<u>Percent of Category Waiting List</u>
Mexico	201,225	41.4%
Dominican Republic	56,223	11.6%
Philippines	50,099	10.3%
Haiti	22,845	4.7%
Cuba	15,715	3.2%
China-mainland born	15,701	3.2%
El Salvador	15,563	3.2%
Vietnam	8,765	1.8%
Jamaica	7,153	1.5%
Guatemala	7,033	1.4%
All Others	86,275	17.7%
Total	486,597	100%

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The third preference category (Married children over the age of 21 (and their spouses and children) of U.S. citizens) has an annual cap of 23,400 for FY2013.

¹⁰⁴ Ibid., p.5.

¹⁰⁵ Ibid., p.6.

<u>Country</u>	<u>Family Third Preference Total</u>	<u>Percent of Category Waiting List</u>
Mexico	183,113	22.0%
Philippines	151,491	18.2%
Vietnam	72,227	8.7%
India	65,134	7.8%
China-mainland born	32,712	4.0%
Cuba	22,606	2.7%
Pakistan	16,752	2.0%
Dominican Republic	16,016	1.9%
Poland	14,728	1.8%
Jamaica	14,564	1.8%
All Others	241,563	29.1%
Total	830,906	100%

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The family fourth preference (Siblings over the age of 21 of U.S. citizens and their spouses and children) had the highest number of applicants on the waiting list (2,473,114).

<u>Country</u>	<u>Family Fourth Preference Total</u>	<u>Percent of Category Waiting List</u>
Mexico	746,137	30.2%
India	230,799	9.3%
Philippines	188,521	7.6%
Vietnam	174,841	7.1%
China-mainland born	171,057	6.9%
Bangladesh	150,747	6.1%
Pakistan	91,286	3.7%
Dominican Republic	50,397	2.0%
Haiti	44,433	1.8%
South Korea	36,361	1.5%
All Others	588,535	23.8%
Total	2,473,114	100%

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The family-based immigrant system is plagued by insufficient visa appropriations. The argument is whether family-based immigration should be the focus of the U.S. immigration

¹⁰⁶ Ibid., p.6.

¹⁰⁷ Ibid., p.7.

system. These arguments, heavily debated with statistical analysis that paint different pictures, will be thoroughly discussed in the next chapter on reform.

Immigrants are job-producers and contribute to the U.S. economy through their role in filling gaps in the workforce. Many of these immigrants were granted visas through family-based immigration. As a “country of immigrants,” accepting on the basis of family will continue to be important. However, the issues at hand must be addressed to curb illegal immigration, and to provide adequate visas in employment-based areas that help the United States significantly more than some family-based categories. Nonetheless, there are aspects that must be maintained. Family-based immigration fosters an emotional and psychological bond for immigrants, who would otherwise feel isolated in a foreign country. To an extent, accepting family members helps immigrants positively impact the United States and makes them want to stay. Employment-based immigration is as, if not more, complicated and contentiously debated. Strong anti-immigration sentiments have resurfaced amidst an economic recession where “American jobs” and the U.S. economy were important points of debate. An investigation of current employment-based immigration is essential to understand the balance between it and family-based immigration.

IV. Employment-Based Immigration

The *Immigration and Nationality Act (INA)* specifies numerical limits and preference categories for employment-based immigration. The *INA* allocates 140,000 visas annually for legal permanent residents (LPRs) on the basis of employment. In FY2010, 14.2 percent of the

total one million LPRs who were admitted were employment-based.¹⁰⁸ A provision in the *INA* details that one country is permitted to account for seven percent of the worldwide level of U.S. immigrant admissions. This provision limits specific countries from dominating immigration levels and promotes diversity in the United States immigration admission process. Additionally, “the *INA* bars the admission of any alien who seeks to enter as a 2nd (advanced degree) or 3rd (professional and skilled) preference LPR to perform skilled or unskilled labor, unless it is determined that (1) there are not sufficient U.S. workers who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed workers in the United States.”¹⁰⁹ To determine this, the Foreign Labor Certification Program in the U.S. Department of Labor must be assured the wages and working conditions of U.S. workers will not be adversely affected.

The employment-based admission process of the immigration system is used to fill gaps in the U.S. workforce and to recruit the best and brightest in their fields to help the United States maintain its worldwide dominance in important sectors. An increase in admission of immigrants based on employment receives arguments for and against. The claim against an increase in employment-based immigration is that it could hurt economic conditions by providing jobs to immigrants over U.S. workers. The opposition cites the high rate of unemployment and a lack of evidence of labor shortages as evidence that an increase in employment based LPRs would hinder the U.S. economy and workforce. Those in favor of the increase in employment-based immigration visas argue eliminating the per-country caps in conjunction with the addition would

¹⁰⁸ Ruth Ellen Wasem, *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*, (Washington, D.C.: Congressional Research Service, 2011), p.5.

¹⁰⁹ *Ibid.*, p.4.

promote economic growth for the United States. Eliminating the caps would increase the flow of high-skilled immigrants that could help the shortage of engineers or computer scientists. For example, applicants from India and China with coveted skills in engineering or medicine who are currently in backlogs would move closer to the front of the line.

A. LPR Employment-Based Visa Caps and Backlogs

Immigrants are admitted or adjusted to LPR status based on numerical limits and preference categories set forth in the *INA*. The employment based-preference categories are as follows:

- First preference: 40,040 for priority workers who are persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers.
- Second preference: 40,040 for members of the professions holding advanced degrees or persons of exceptional ability.
- Third preference: 40,040 skilled workers with at least two years training, professionals with baccalaureate degrees, and unskilled workers in occupations in which U.S. workers are in short supply.
- Fourth preference: 10,000 for special immigrants who largely consist of religious workers, certain former employees of the U.S. government, and undocumented juveniles who become wards of the court.

- Fifth preference: 10,000 for investors who invest at least \$1 million (or less money in rural areas or areas of high unemployment) to create at least 10 new jobs.¹¹⁰

Table I. Employment-Based Immigration Preference System

Category		Numerical limit
Employment-Based Preference Immigrants		Worldwide Level 140,000
<i>1st preference</i>	Priority workers: persons of extraordinary ability in the arts, science, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers	28.6% of worldwide limit (37,520) plus unused 4 th and 5 th preference
<i>2nd preference</i>	Members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business	28.6% of worldwide limit (37,520) plus unused 1 st preference
Category		Numerical limit
<i>3rd preference—professional & skilled</i>	Skilled shortage workers with at least two years training or experience; professionals with baccalaureate degrees	28.6% of worldwide limit (37,520) plus unused 1 st or 2 nd preference
<i>3rd preference—“other”</i>	Unskilled shortage workers	10,000 (taken from the total available for 3 rd preference)
<i>4th preference</i>	“Special immigrants,” including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit (9,940); religious workers limited to 5,000
<i>5th preference</i>	Employment creation investors who invest at least \$1 million (amount may vary in rural areas or areas of high unemployment) that will create at least 10 new jobs	7.1% of worldwide limit (9,940); 3,000 <i>minimum</i> reserved for investors in rural or high unemployment areas

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There are two sides to the per-country visa cap debate: First, opposition to the current cap system argues the caps are arbitrary and that employability is not reflected through country of birth.

Second, support asserts that per-country ceilings restrict a few high-demand countries from dominating the visa numbers, thereby maintaining diverse immigration inflows. The attempt by the per-country ceilings to restrict China and India from flooding employment-based immigration is successful. In the following table, China and India are the only two countries in

¹¹⁰ Ruth Ellen Wasem, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, (Washington, D.C.: Congressional Research Service, 2012), p.13.

¹¹¹ *Ibid.*, p.3.

the world where “advanced degrees/exceptional ability” are waiting to be admitted into the United States. The wait isn’t short either. Chinese and Indians within this category had already been in line for four years when the report was filed.¹¹²

Table 3. Priority Dates for Employment Preference Visas for November 2011

Category	Worldwide	China	India	Mexico	Philippines
Priority workers	current	current	current	current	current
Advanced degrees/ exceptional ability	current	Nov. 1, 2007	Nov. 1, 2007	current	current
Skilled and professional	Dec. 22, 2005	Aug. 22, 2004	July 22, 2002	Dec. 22, 2005	Dec. 22, 2005
Unskilled	Nov. 15, 2005	April 22, 2003	June 15, 2002	Nov. 15, 2005	Nov. 15, 2005
Special immigrants	current	current	current	current	current
Investors	current	current	current	current	current

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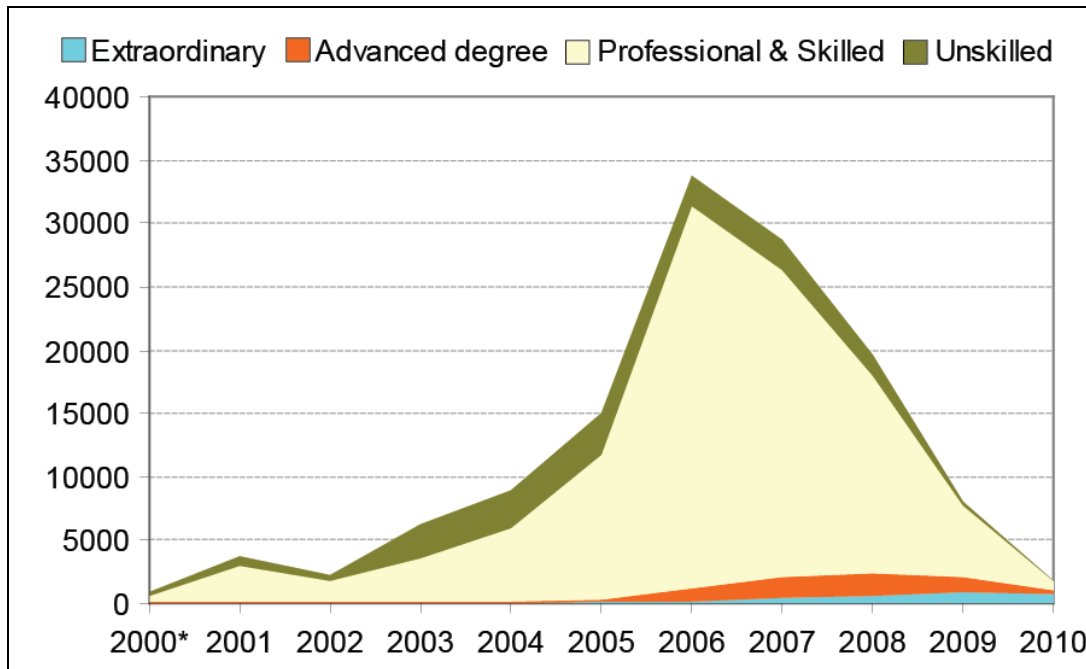
On November 1, 2010, there were 128,882 visas pending at the National Visa Center that were in the 1st through 3rd employment-based LPR preference categories. Of that, 2,961 approved were in the first preference “extraordinary” category, 6,738 from the 2nd preference of advanced degrees, 16,788 for unskilled workers, and an overwhelming majority of 102,395 for professional and skilled workers.¹¹⁴

¹¹² Ibid., p.6.

¹¹³ Ibid., p.8.

¹¹⁴ Ibid., p.9.

Figure 3. Approved Employment-Based Visa Petitions Pending November 2010 by Date of Submission and by Preference Category



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The sharp decline in approvals after 2007 is due to the visa retrogression that took place that year. Additionally, the economic recession contributed to the smaller number of accepted petitions because there were fewer employers who petitioned due to less of a need for employment.

B. Trends in Employment-Based LPR Admissions

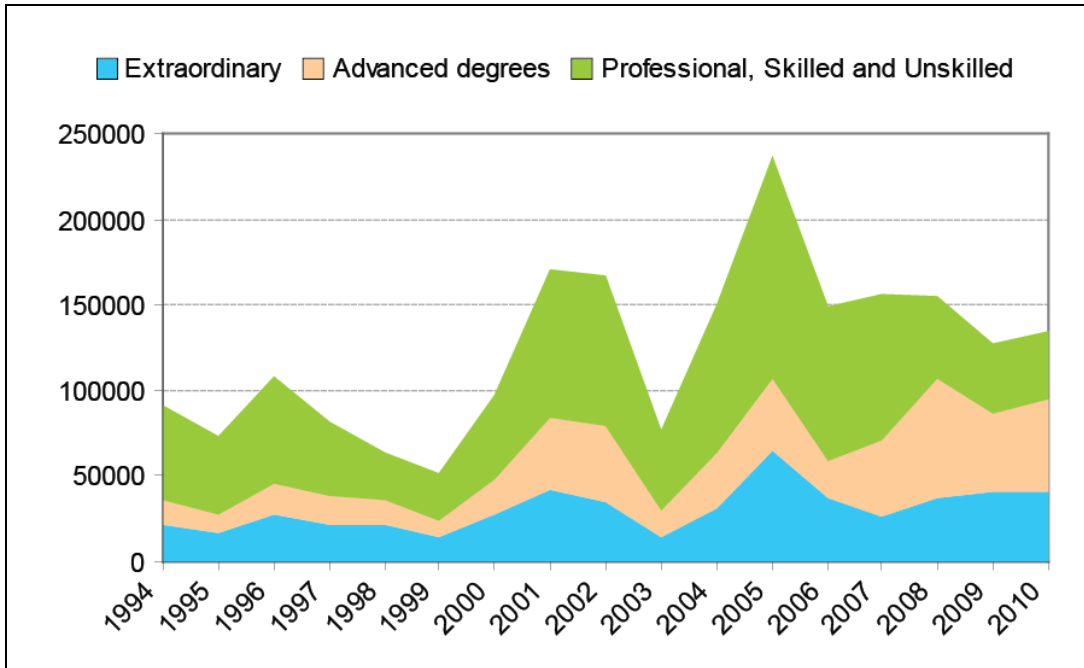
Since FY1994, the number of employment-based LPRs has increased from 100,000 to over 148,343 in 2010.¹¹⁶ The *Immigration and Nationality Act of 1965* requires that 86 percent of employment-based visas are allotted for the first three preference categories. Most notably,

¹¹⁵ Ibid., p.9.

¹¹⁶ Ibid., p.5.

the United States has increased “extraordinary” LPRs by 49 percent and “advanced degree” LPRs by 73 percent.¹¹⁷

Figure 2. Permanent Employment-Based Admissions for 1st, 2nd, and 3rd Preferences, 1994-2010



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These increases help promote employment-based immigration to fill sectors the United States will need in the future. The United States, as the world leader, wants to be at the forefront of the technological future of the world. The acceptance of STEM immigrants is widely seen as an important step in the progress of filling gaps in the most important sectors of the U.S. workforce.

¹¹⁷ Ibid., p.5.

¹¹⁸ Ibid., p.5.

V. STEM Immigrants

With technology booming, medicine constantly advancing, and infrastructure issues, the United States needs students in science, technology, engineering, and mathematics (STEM) more than ever. The United States must compete with other countries who have also intensified their recruitment for young minds and skills. The United States remains the leading host country for international students, and there is a reinvigorated focus on creating additional immigration pathways for immigrants who specialize in STEM fields. President Obama called on Congress in his 2013 State of the Union address to pass reform that could help fix problems with current STEM legislation:

“Our journey is not complete until we find a better way to welcome the striving, hopeful immigrants who still see America as a land of opportunity; until bright young students and engineers are enlisted in our workforce rather than expelled from our country.”¹¹⁹

Several political leaders have echoed President Obama’s call. Congresswoman Suzan DelBene (D-WA), expressed her belief that STEM immigration needed to be reformed:

“It’s a broken system, I think everyone acknowledges that ... I think it’s very important to make sure our companies are competitive, globally competitive, to make sure they have the talent moving forward.”¹²⁰

The current immigration system outlined by the *Immigration and Nationality Act of 1965 (INA)* allows 140,000 visas on the basis of employment (which includes the spouses and children in

¹¹⁹ Alex Wilhelm, “President Obama Calls for STEM Immigration Reform, Nudging Congress to Return to the Issue,” January 2013, The Next Web, <http://thenextweb.com/us/2013/01/21/obama-calls-for-stem-immigration-reform-prompting-congress-to-return-to-the-issue/#!xWCEG>.

¹²⁰ Tracy Vedder, “Immigration reform: STEM visa program a ‘broken system,’” February 2014, Sinclair Interactive Media, <http://www.komonews.com/news/local/Immigration-reform-STEM-visa-program-a-broken-system-244171401.html>.

addition to the visa cap). Several members of Congress believe a higher percentage of the allotted visas under employment-based immigration should be given to STEM immigrants. There are additional obstacles in STEM immigration that Congress must solve going forward in order to create an effective policy.

A. Problems with the Universal STEM Definition

There is no strict definition on what constitutes a specific “STEM” academic discipline. “The National Science Foundation (NSF) studies the fields broadly and includes biological, agricultural, and environmental life sciences; computer and information sciences; mathematics and statistics; the physical sciences; psychology; the social sciences; engineering; and health fields.”¹²¹ The Department of Homeland Security’s (DHS’s) Immigration and Customs Enforcement (ICE) — the law enforcement agency in charge of identifying and dismantling vulnerabilities in the nation’s border and immigration infrastructure — has a much narrower definition. ICE does not include economics, sociology, and political science. To make matters more complicated, “the National Center for Education Statistics often uses the ICE definition.”¹²² The inconsistency in defining what constitutes a STEM degree could have consequences when linking it to LPR status. As a result of revisions in federal Standard Occupational Classification (SOC) for STEM occupations, employees were significantly reclassified. Currently, five percent of all jobs in the U.S. labor force are considered STEM positions.¹²³ A broader definition, some

¹²¹ Ruth Ellen Wasem, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, (Washington, D.C.: Congressional Research Service, 2012), p.2.

¹²² *Ibid.*, p.2.

¹²³ *Ibid.*, p.25.

contend, would create increased manipulation and abuse. However, proponents for an expansive definition argue that even a narrow definition would be subject to varied labor market conditions. Engineering is used by Ruth Ellen Wasem in her report *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees* (2012) to demonstrate how a discipline can evolve and splinter:

*“Civil engineers had more specialized training as structural engineers, dam engineers, water-power engineers, bridge engineers; mechanical engineers as machine-design engineers, industrial engineers, motive-power engineers; electrical engineers as power and communication engineers (and the latter divided eventually into telegraph, telephone, radio, television, and radar engineers, whereas the power engineers divided into fossil-fuel and nuclear engineers); mining engineers as metallic-ore mining engineers and fossil-fuel mining engineers (the latter divided into coal and petroleum engineers) ... Today, engineering also encompasses such professions as computer engineers designing micro-chips that use light pulses and biomedical engineers researching the structure of human cells to foster tissue growth.”*¹²⁴

In order to fix confusion and create a clear definition of a STEM field, Wasem cites a 2011 House hearing in which “one witness ... recommended first clarifying the policy motivations for the immigration benefit and then assigning the task of enumerating eligible fields to an agency or inter-agency work-group.”¹²⁵ Therefore, it would be most effective to look at each sub-field under the STEM categories — i.e. computer versus electrical engineering — and discern if it will be listed under the official definition of a STEM discipline.

¹²⁴ Ibid., p.25.

¹²⁵ Ibid., p.26.

B. Statuses Under STEM

1. Temporary Foreign Students

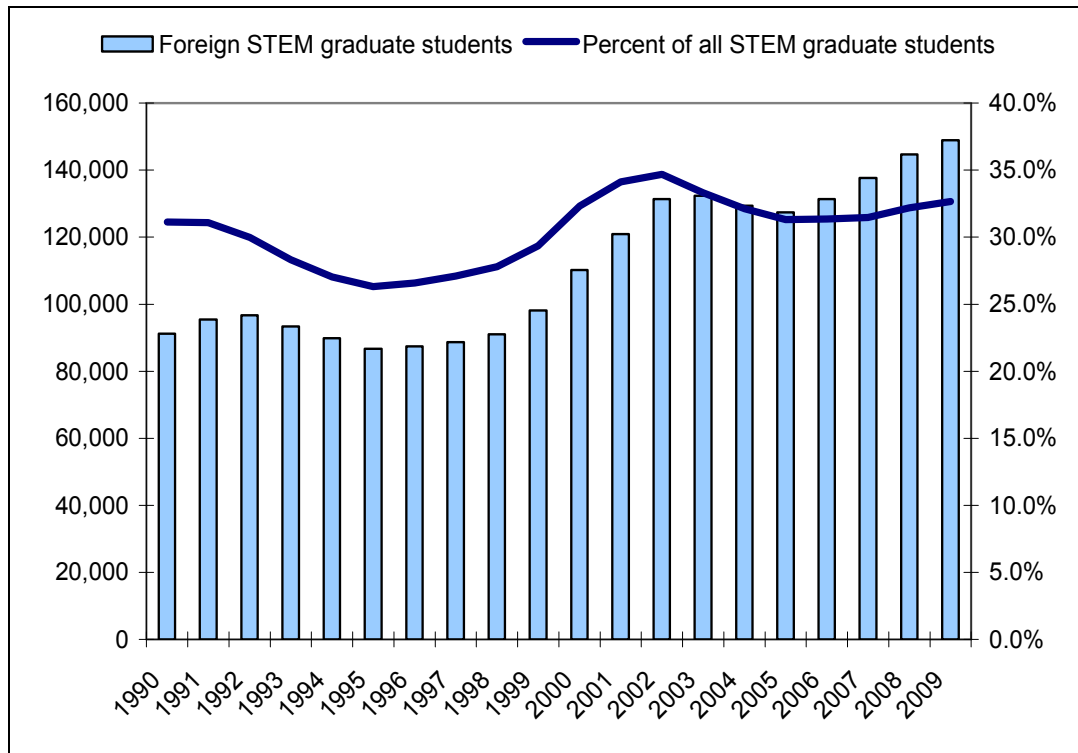
The United States has a long tradition of welcoming foreign students to study at its institutions of higher education. The *Immigration Act of 1924*, while it was discriminatory, did open the door to this policy. Although these foreign students are nonimmigrants, their presence is generally viewed as positive. These students are admitted in large part by the F-1 visa. The F-1 visa is allocated to those who wish to have a full-time education in the United States. F-1 visa holders may bring their spouses and children with them using the F-2 visa; however, F-2 visa holders are barred from working in the United States. Students with F-1 visas also cannot work unless it is in practical training which relates to their degree program. For example, if a student is in medical school, they may work at a local hospital to help with medical research. In FY2010, there were 512,884 F-1 visa holders with an active status in the United States.¹²⁶ Of the total F-1 visa holders, 148,923 (32.7%) were in science, engineering, and health fields.¹²⁷ Despite the increase in foreign students, the percentage of STEM graduate students to the total number of F-1 visa holders has remained almost the same. In 1990, 91,150 foreign students were enrolled in STEM fields, which made up 31.1 percent of the total.¹²⁸

¹²⁶ Ibid., p.3.

¹²⁷ Ibid., p.3.

¹²⁸ Ibid., p.3.

Figure 1. Full-Time Graduate Students with Temporary Visas in Science, Engineering, and Health Fields, 1990-2010



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According to the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS), 10,000 foreign students earned doctoral degrees in STEM fields in 2009 and nearly 30,000 foreign students earned masters degrees.¹³⁰ Engineering is the leading field for masters and doctoral recipients in 2010. India had the greatest representation of STEM graduates in masters programs at 56% of all STEM students in 2009.¹³¹ China had the second-highest representation, and their students were spread more evenly across all of the STEM disciplines. China also had the highest number of students enrolled in doctoral programs at 35%

¹²⁹ Ibid., p.4.

¹³⁰ Ibid., p.4.

¹³¹ Ibid., p.5.

in 2009.¹³² More impressively is that China's doctoral students made up almost half of all foreign nationals in mathematics and physical sciences and almost one third of all foreign nationals in other STEM fields (excluding psychology and social sciences).¹³³

F-1 visa holders have two options when they graduate from their degree program: an Optional Practical Training (OPT) program or a H-1B visa. OPT programs are “temporary employment that is directly related to an F-1 student’s major area of study.”¹³⁴ U.S. Citizenship and Immigration Service (USCIS) reports that in FY2010 92,465 F-1 visa holders were engaged in OPT.¹³⁵ Ten thousand and twenty-two of the 92,465 F-1 students (10.8%) obtained the 17-month extension as graduates of STEM disciplines. These programs run up to 12 months for F-1 foreign students, but those in STEM fields employed by an employer who is enrolled in E-Verify — a controversial employment verification program that requires employers to confirm a potential employee is lawfully in the United States and permitted to work — may stay in the program for up to 29 months.

The other option for F-1 visa holders is to adjust to H-1B visa status. This visa is not limited to F-1 visa holders, as many other immigrants under “nonimmigrant” status adjust from another status or directly immigrate to H-1B. A nonimmigrant can stay a maximum of six years on an H-1B visa. Sixty-five thousand nonimmigrants may be under the H-1B status annually.¹³⁶ While the H-1B visa does not consist solely of STEM professionals, they make up the majority

¹³² Ibid., p.5.

¹³³ Ibid., p.5.

¹³⁴ Ibid., p.7.

¹³⁵ Ibid., p.7.

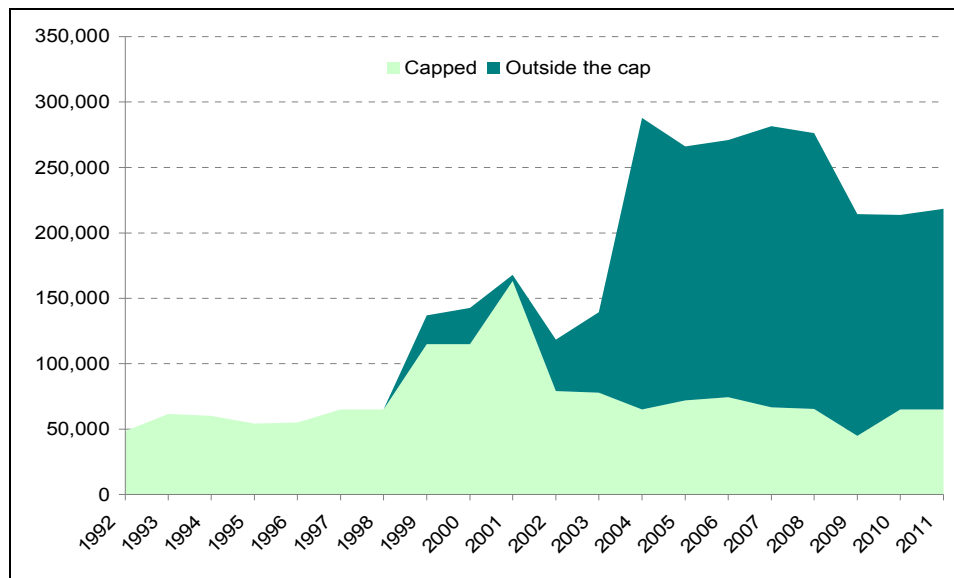
¹³⁶ Ibid., p.8.

of visas allotted for the status. Any employer wishing to hire an H-1B nonimmigrant must fill out the labor attestation form, promising to “pay the nonimmigrant the greater of the actual wages paid to other employees in the same job or the prevailing wages for that occupation; that the firm will provide working conditions for the nonimmigrants that do not cause the working conditions of other employees to be adversely affected; and that there is no applicable strike or lockout.”¹³⁷

There were 218,500 H-1B petitions approved in FY2011. Although the numerical cap is 65,000, several exceptions to the limit allow for the number to exceed the cap by a large amount of petitions. For example, H-1B nonimmigrants who work in universities are not counted against the cap. Similarly, 20,000 nonimmigrants holding a master’s or higher degree are exempt from the H-1B cap due to a provision in the *Consolidated Appropriations Act of 2005* (P.L. 108-447).¹³⁸ From 1992 to 2011, more H-1B workers were approved outside the numerical cap than under it.

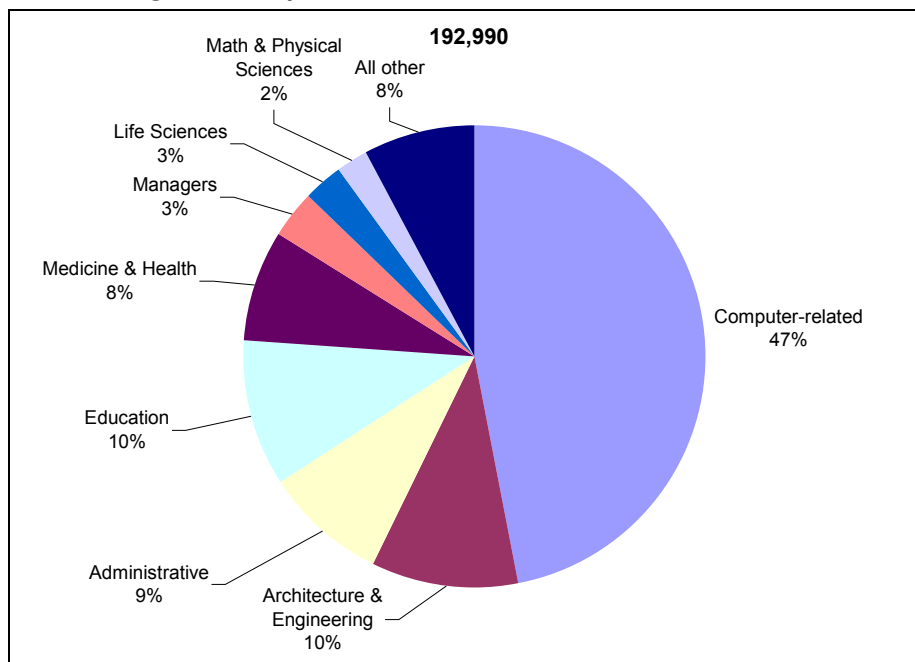
¹³⁷ Ibid., p.9.

¹³⁸ Ibid., p.9.

Figure 4. Total H-1B Petitions Approved, FY1992-FY2011

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In FY2010, the vast majority of H-1B workers were employed in STEM occupations.

Figure 5. Occupations of H-1B Worker Beneficiaries in FY2010

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¹³⁹ Ibid., p.9.

¹⁴⁰ Ibid., p.10.

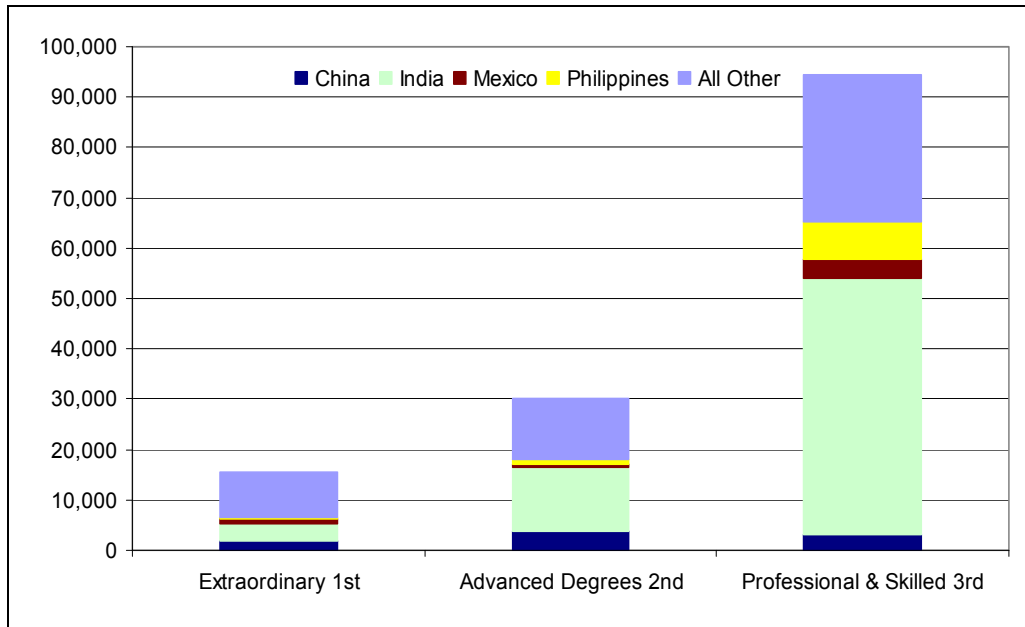
2. LPR-Adjusted STEM Degree Workers

Foreign nationals with STEM degrees may qualify under many of the employment-based preference categories detailed in the *Immigration and Nationality Act of 1965*. Their assignment to a specific preference is dependent on their talents, educational degree status, expertise in the specific area, and experience. An employer who wishes to hire an employment-based immigrant through the second or third preference categories (detailed on page 61) must petition the Department of Labor (DOL) on behalf of the immigrant. If the DOL approves the petition due to a labor shortage in the occupational area, certification will be granted. In total, foreign nationals employed in STEM fields constituted 44% of the total employment-based LPRs in the first, second, and third preference categories from FY2000 to FY2009.¹⁴¹

A major issue involving employment-based immigration, as well as the United States immigration system as a whole, is the wait times for approved applications. The I-485 application, or the “Application to Register Permanent Residence or Adjust Status,” is the way in which aliens can petition to become an employment-based LPR within the United States. This means that in the I-485 inventory of data, those who would be new arrivals from abroad would not be included. For example, an F-1 visa holder may fill out the I-485 form to become an LPR. This person has attended a college or university in the United States, rather than a new arrival with no experience in the United States education system or workforce. Therefore, the fact that there is a large volume of approved I-485 candidates in STEM fields pending is a critical issue.

¹⁴¹ Ibid., p.14.

**Figure 8. Employment-Based I-485 Applications Pending January 2012
by Preference and Top Countries**



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As demonstrated in the figure above, STEM graduates applying for LPR status will wait even if they are of extraordinary ability. However, the number of visas pending is underestimated in the figure above. The graph illustrates how many applications there were as of January 2012; however, according to Ruth Ellen Wasem, since “there are no third preference I-485 applications filed after August 2007 in the I-485 Inventory, [it] suggests that USCIS has not been approving many since the 2007 visa retrogression pushed back the visa priority dates.”¹⁴³ Therefore, the chart does not depict the applications filed since August 2007, drastically under representing the total number pending.

In 2011, Stuart Anderson of the National Foundation for American Policy released a study entitled *Keeping Talent in America*. The study investigated prospective LPRs who had

¹⁴² Ibid., p.15.

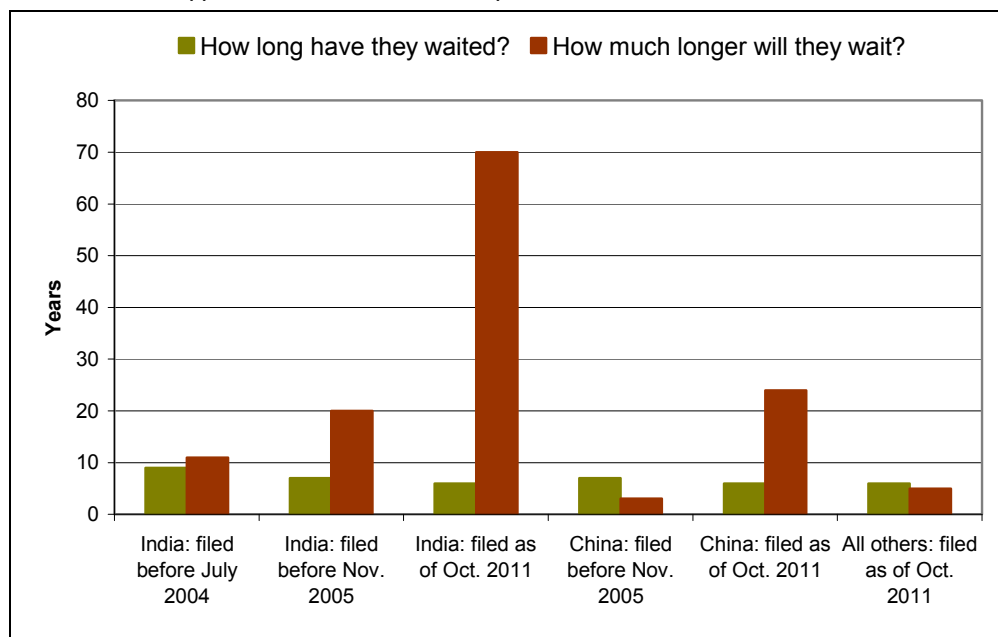
¹⁴³ Ibid., p.21.

been approved to immigrate but were caught in backlogs due to numerically limited visas.

Anderson concluded that a professional worker from India who applied for third preference visa status under the employment-based provision of the *Immigration and Nationality Act of 1965* would have to wait approximately 70 years to obtain LPR status.¹⁴⁴ The following figure demonstrates how prospective LPRs have been waiting for a long time and will continue to wait.

Figure 9. Projected Wait Times for Third Preference LPRs

Upper end NFAP estimates for professionals from India and China



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Anderson's study purports that if 50,000 visas were exempt for advanced STEM degrees, the second-preference category could be made current in two years and the third-preference category could be made current in ten years. The allocation of the separate visas for advanced STEM

¹⁴⁴ Stuart Anderson, *Keeping Talent in America*, (Virginia: National Foundation for American Policy, 2011), p.2.

¹⁴⁵ Ruth Ellen Wasem, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, (Washington, D.C.: Congressional Research Service, 2012), p.21.

degrees, in Anderson's estimation, would increase the overall efficiency of the employment-based part of the immigration system while allowing immigrants with important skills in STEM fields to be admitted faster.

C. Statistics on the Positive Effects of STEM Graduates

An important factor for the United States is its ability to foster an environment in which foreign STEM graduates want to stay to work in the United States for several years. Michael G. Finn, a researcher for the National Science Foundation (NSF), has investigated the amount of years foreign nationals with doctorates have stayed. In 2009, his latest report detailed that the "stay rate" for foreign doctorate recipients who graduated five years earlier was only 64 percent and 66 percent for those who graduated ten years earlier.¹⁴⁶

There is a growing concern by many business, academic, and policy leaders that the United States will have STEM workforce shortages in the near future. If a shortage occurred, the global economic competitiveness of the United States would decrease. According to Wasem, "Some analysts warn that without retaining more STEM graduates, the United States would suffer a loss of entrepreneurship, would decline in the knowledge economy, and would lose its premier place in the world of innovation."¹⁴⁷ In 2006, 25.6 percent of international patents in the United States were created by foreign-born residents.¹⁴⁸ Similarly, in the U.S. Patent and Trademark Office's public online database, of the 1,466 patents from the top ten patent-producing universities in 2011 (the University of California system, Stanford University,

¹⁴⁶ Ibid., p.22.

¹⁴⁷ Ibid., p.24.

¹⁴⁸ Ibid., p.24.

Massachusetts Institute of Technology, University of Wisconsin, the University of Texas system, California Institute of Technology, the University of Illinois system, University of Michigan, Cornell University and Georgia Institute of Technology), 76 percent of the patents had a foreign-born inventor.¹⁴⁹ Additionally, 54 percent of these patents were awarded to the group of foreign inventors most likely to face visa hurdles in the current U.S. immigration system: students, postdoctoral fellows, or staff researchers.¹⁵⁰ The U.S. Patent and Trademark Office also records extraordinary roles played by foreign-born inventors in the fields of semiconductor device manufacturing (87 percent), information technology (84 percent), pulse or digital communications (83 percent), pharmaceutical drugs or drug compounds (79 percent), and optics (77 percent).¹⁵¹ “‘The simple fact is that foreign-born STEM graduates of U.S. universities are job creators,’ said Nick Schulz of the American Enterprise Institute. ‘Every graduate with an advanced degree working in a STEM-related field in the United States has been shown to create on average 2.62 additional jobs for native-born workers. Sending those people away doesn’t protect American jobs, it jeopardizes them.’”¹⁵² Another argument is that foreign-born residents educated in U.S. universities and institutions contribute to retaining companies in the United States. As the U.S. Chamber of Commerce President Tom Donohue said, “companies have a simple choice: If we can’t get them here and they go somewhere else, we send the work to where

¹⁴⁹ “Immigrants Behind 76% of Patents from Top American Universities,” June 2012, MikeBloomberg.com, <http://www.mikebloomberg.com/index.cfm?objectid=C2A5A8A8-C29C-7CA2-FB8F424CDC92F580>.

¹⁵⁰ Ibid., p.1.

¹⁵¹ Ibid., p.1.

¹⁵² Ibid., p.1.

they are.”¹⁵³ Similarly, advocates for reformed STEM visa legislation argue that the United States should make it easier for foreign-born STEM graduates educated by United States universities to attain LPR status, rather than inducing an outflow of the brightest minds to competing countries. However, “the chairman of the House Committee on the Judiciary warned that establishment of STEM visas would create an incentive for some schools to recruit tuition-paying foreign students with the lure of LPR status upon graduation and cited reports from Australia, where some institutions of higher education were deemed to be ‘selling education for visas.’”¹⁵⁴ Furthermore, incentives of STEM visas could create displacement of American students or lead to an over-production of advanced STEM degrees. These concerns, however, can be closely monitored to avoid such a system. One possible solution would be to limit “the eligible institutions to those requiring residency at the institution or receiving funding from NSF or the National Institutes of Health.”¹⁵⁵ This task would be up to Congress and immigration and education experts to define in a way that promoted a strong and balanced U.S. economy and labor force.

D. Legislation Proposed in Congress

The issue over how to create an effective STEM visa program has gained traction in recent Congresses. The 112th Congress introduced various bills with regards to STEM visas (H.R. 399, H.R. 2161, H.R. 3146, H.R. 5893, H.R. 6412, S. 1965, S. 1986, S. 3185, S. 3192, and

¹⁵³ Ruth Ellen Wasem, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, (Washington, D.C.: Congressional Research Service, 2012), p.24.

¹⁵⁴ *Ibid.*, p.26.

¹⁵⁵ *Ibid.*, p.27.

S. 3217), in hopes that changes could help the U.S. economy and workforce. The 113th Congress has continued the push for improving STEM provisions by introducing H.R. 459 and S. 303. While neither bill has made it past the floor of their respective house, both express Congress's desire to make STEM degree holders LPRs in a more efficient manner. It is clear that any reform to STEM programs should have its own separate bill from general immigration. The complexity and importance of attracting and retaining those with high degrees that can contribute in the most important areas of the U.S. economy cannot be understated: Congress must pass effective reform that addresses serious issues and promotes economic growth.

VI. Low-Skilled Workers

The high percentage of illegal immigrants that work in low-skilled sectors drives the immigration debate for many Americans. There is a perception that Mexicans have illegally immigrated in extraordinary numbers and negatively affected the United States. Low-skilled immigrants fill gaps in many industries, mainly agriculture. Many U.S. employers in several industries argue there is a shortage of U.S. workers willing to work in low-skilled areas; and therefore, they need to hire foreign workers to fill gaps. Opposition to this theory contend that U.S. workers can and should fill these positions. In the current immigration system, lower-skilled foreign workers may be admitted to the United States temporarily under the two temporary worker visas: the H-2A visa (for agricultural workers) and the H-2B visa (for nonagricultural workers). The H-2A and H-2B programs, also known as guest worker programs, involve multiple agencies including the Department of Labor (DOL), the Department of

Homeland Security (DHS), and the Department of State. Both programs are monitored by U.S. Citizenship and Immigration Services (USCIS) and the DOL's Employment and Training Administration. Both programs attempt to respond to employer needs for labor while providing sufficient protections for both U.S. workers and the foreign temporary workers.

A. Guest Worker Programs

The first step, the DOL labor certification application, is completed by employers who ensure the department that U.S. workers are not available for the jobs in question and that foreign workers hired would not negatively affect U.S. workers. The certification process has yielded inadequate responses for employers and concerns over worker protection. The H-2A program and foreign agricultural workers in general have attracted the attention of Congress due to these concerns. Future reform proposals will most likely include provisions that solve a labor market-tested availability of U.S. workers for positions and wages, while lessening the burden on employers willing to hire immigrants in the guest worker programs.

The assertion by U.S. employers that they need to hire foreign workers to perform low-skilled jobs is uncertain. With the recent economic collapse in 2008 and high U.S. unemployment, opposition to admitting foreign-born workers was high. Nonetheless, various factors make it extremely difficult to define the existence of a labor shortage industry and occupation. Labor shortages in seasonal agriculture has regained significant attention due to the drastic increase in illegal immigration since 1990. However, even if there is a labor shortage, it does not answer all the questions surrounding the issue. Andorra Bruno, in his 2012 report *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, asks the

following questions to demonstrate the complexity in formulating an adequate guest worker program:

*“Would more U.S. workers be willing to become farm workers if wages were raised and the terms of work were changed? If so, would such wage and other changes make the U.S. agricultural industry uncompetitive in the world marketplace? Alternatively, would there be an adequate supply of authorized U.S. farm workers if new technologies were developed and implemented?”*¹⁵⁶

As detailed in Chapter II of this thesis (“The History of U.S. Immigration”), guest worker programs have been used to address U.S. workforce shortages in the past. Tens of thousands of Mexicans worked in agriculture during World War I and the United States created the Bracero program during World War II which imported millions of Mexican agricultural workers until it was dissolved in 1964. H-2A and H-2B are significantly less in size than previous programs like the Bracero Program; however, they have a significant impact on the United States. Whether one is favor of expansion or no expansion of the guest worker programs, there is an overwhelming majority of lawmakers and policy experts who believe that significant reforms, if not a complete overhaul, is necessary.

B. Unauthorized Employment

The key issue with guest worker programs is that they do not adequately prevent unauthorized aliens from circumventing the system, working in low-skilled industries, and remaining in the United States to work. In March 2010, the Pew Hispanic Research Center

¹⁵⁶ Andorra Bruno, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*, (Washington, D.C.: Congressional Research Service, 2012), p.1.

reported that there were eight million unauthorized workers in the United States civilian labor force (5.2% of the total labor force).¹⁵⁷ To prevent this number from increasing, and hopefully cause a decline, Congress implemented systems that verify employment eligibility of workers. All U.S. employers must verify the identity and work authorization of new hires; and can choose, but are not required, to participate in the E-Verify electronic verification system administered by the USCIS. Recent reform proposals, which will be discussed in the following chapter, detail a requirement for all employers to follow such a system. The hope is that a verification system will demonstrate the areas where there are true labor shortages.

The H-2B program is not viewed as administratively or economically inefficient and ineffective as the H-2A program. Recent criticism by employers and reform efforts have instead focused on expanding the visa limit of 66,000 and to create the ability for employers to hire workers to meet temporary labor needs that are ongoing in the industry. Much like the H-2A visa program, concerns over protections have led to reform proposals detailing increased federal labor law enforcement, recruitment of U.S. workers, wage fairness, and labor recruiter accountability. Providing evidence of labor shortages is a primary goal before reforms can be made to the H-2A and H-2B programs.

As previously stated, the current guest worker programs have a reputation of being slow and ineffective in protecting U.S. workers. While policymakers wish to fill labor shortages with U.S. citizens first, the method of attaining this goal is widely debated. The DOL complains that the labor certification process is overly complicated, time-consuming, and is far too expensive for employers. Similarly, the DOL has expressed concerns that employers do not demonstrate

¹⁵⁷ Jeffrey S. Passel, *Unauthorized Immigrant Population: National and State Trends*, (Washington, D.C.: Pew Hispanic Center, 2010), p.1.

the performance of labor market tests in accordance with regulations that proves U.S. workers are protected.

VII. Illegal Immigration and Federal Enforcement

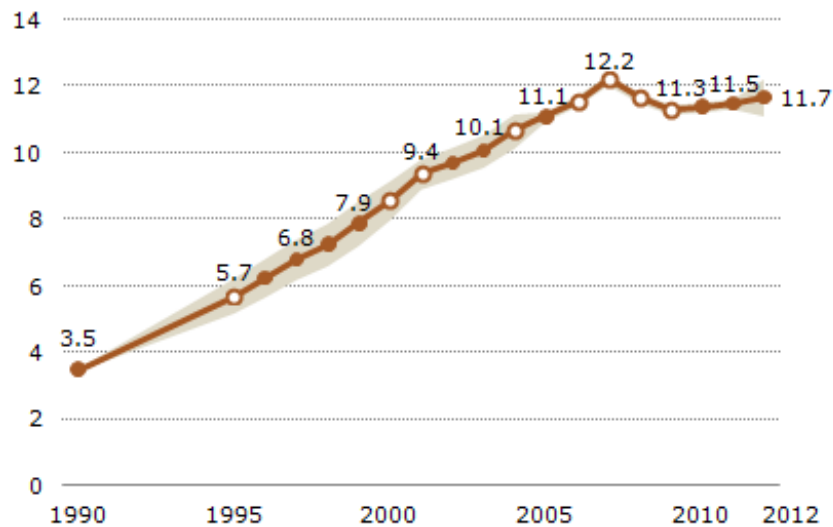
For over two decades, the U.S. government has attempted to solve the growing illegal immigration problem through enhanced border enforcement. No matter what the legislation passed, there have been unintended consequences. The U.S. immigration system has allowed high numbers of unauthorized immigration, as it neglects to balance the pull of valuable U.S. jobs with circularity. Circularity refers to the consistent inflow and outflow of immigrants. For example, the Bracero program created a continuous and efficient circularity by providing jobs for a period of time to agricultural workers and then allowing them to return home once the season was over. The pinnacle of the waste in immigration spending is the misguided, inefficient, and ineffective border enforcement Congress has continued to increase in funding.

A. Federal Law Enforcement of Immigration

Since 1990, the number of undocumented immigrants has increased from 3.5 million to 11.7 million in 2012.¹⁵⁸

¹⁵⁸ "Key Data Points from Pew Research," September 2013, Pew Research Center, www.pewresearch.org/, p.1.

Figure 1
Estimates of the U.S. Unauthorized Immigrant
Population, 1990-2012
in millions



Notes: Shading surrounding line indicates low and high points of the estimated 90% confidence interval. White data markers indicate the change from the previous year is statistically significant (for 1995, change is significant from 1990). Data labels are for 1990, odd years from 1995-2011 and 2012.

Source: Table 1, derived from Pew Research Center estimates based on residual methodology applied to March Supplements to the Current Population Survey for 1995-2004, 2012 and to the American Community Survey for 2005-2011. Estimates for 1990 from [Warren and Warren \(2013\)](#). See Methodology.

PEW RESEARCH CENTER

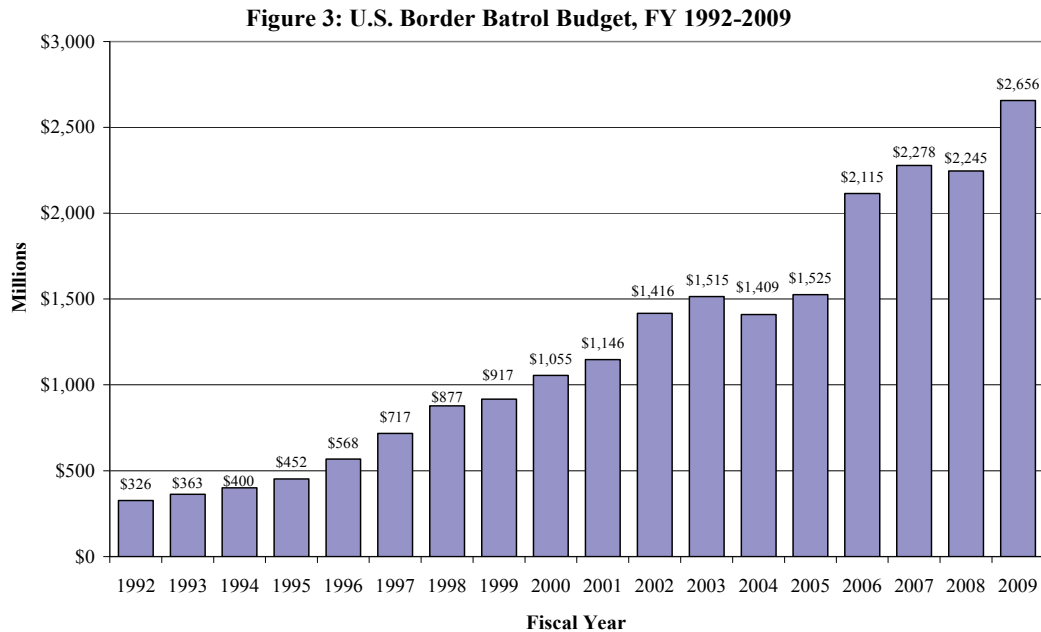
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“Furthermore, the Pew Hispanic Center estimates that between 25% and 40% of all unauthorized immigrants do not sneak across the border, but come to the United States on valid visas and then stay after their visas expire, meaning that border enforcement is irrelevant to a large portion of unauthorized population.”¹⁶⁰ Despite this ineffectiveness, the annual budget of the U.S. Border

¹⁵⁹ Ibid., p.1.

¹⁶⁰ *Breaking Down the Problems: What's Wrong with Our Immigration System?* (Washington, D.C.: Immigration Policy Center, 2009), p.12.

Patrol has skyrocketed from \$326.2 million in FY1992 to an astounding \$2.7 billion in FY2009.¹⁶¹ This increase is a surge of 714%.



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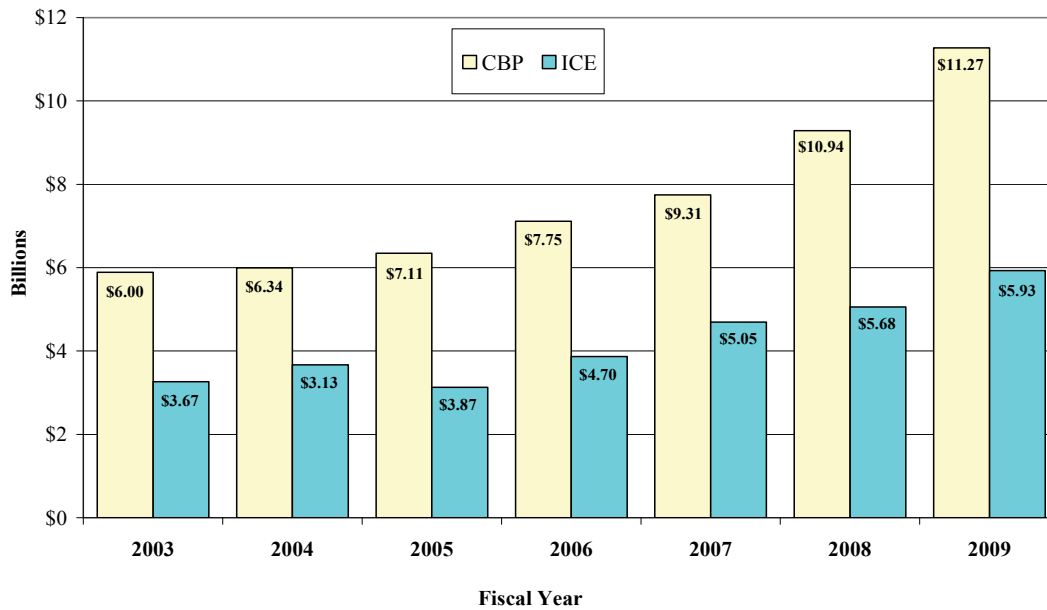
Similarly, since the creation of the Department of Homeland Security (DHS) in 2003, the budget of U.S. Customs and Border Protection (CBP) — the law enforcement agency in charge of regulating trade, customs, and immigration policies across borders — has increased 92% (\$6.0 billion in FY2003 to \$11.3 billion in FY2009).¹⁶³ Furthermore, the budget of U.S. Immigration and Customs Enforcement (ICE), the DHS program that enforces the interior of the United States, rose from \$3.3 billion in FY2003 to \$5.9 billion in FY2009.¹⁶⁴

¹⁶¹ Ibid., p.12.

¹⁶² Ibid., p.13.

¹⁶³ Ibid., p.13.

¹⁶⁴ Ibid., p.13.

Figure 5: CBP & ICE Budgets, FY 2003-2009

Source: U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 through 2010.

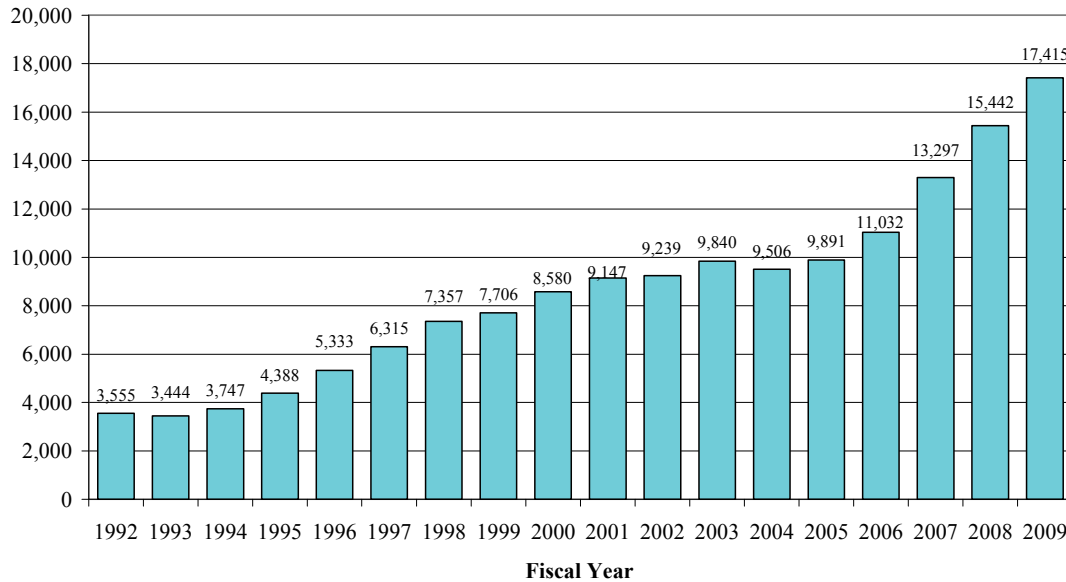
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Additionally, Congress has authorized the augmentation of border enforcement in terms of Border Patrol agents. In FY1992, there were 3,555 agents stationed along the southwest border, but by FY2009, there were 17,415.¹⁶⁶

¹⁶⁵ Ibid., p.13.

¹⁶⁶ Ibid., p.12.

Figure 4: U.S. Border Patrol Agents Stationed Along Southwest Border, FY 1992-2009



U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

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Furthermore, as technology has advanced, so has the ways in which the United States has protected its borders. Better fences, cameras, and sensors along with unmanned aircrafts have been implemented in what many opponents call a “militarization” of the border. Despite this “militarization” and increased border patrol efforts, illegal immigration has only increased.

In 1993 and 1994, CBP initiated two efforts to stop illegal immigration. The result was a more dangerous border than ever with reduced circularity of immigration. Operation Blockade, the militarization of the El Paso Sector, and Operation Gatekeeper, the militarization of the San Diego sector, have caused immigrants to be cut off from traditional entry points and funneled into dangerous desert land in Arizona. “According to the Government Accountability Office, between 1995 and 2005 the number of border deaths had more than doubled due to new entry

¹⁶⁷ Ibid., p.13.

points causing an increase in heat exhaustion, exposure, suffocation, or drowning.”¹⁶⁸ With enhanced border enforcement initiatives causing illegal migration to be more difficult and dangerous, migrants were trapped in the United States. The average stay of an unauthorized immigrant tripled from three years in the 1980s to nine years in 1990.¹⁶⁹ These illegal immigrants preferred to risk being deported rather than return home and find themselves unable to return to the United States.

B. Employer abuse of Illegal Immigrants

The dangers of being an illegal immigrant do not stop with crossing the border. Many employers hire unauthorized workers in order to maximize profits, resulting in lower-than native-born wages. The illegality of the immigrants makes them susceptible to abuse by employers, and simultaneously negatively affects employers who follow immigration laws and do not hire illegal immigrants. On-the-job death rates for Latino workers are much higher than that of native-born workers. Unable to assert rights or join unions, they cannot fight for themselves and therefore are subject to dangerous conditions. The lack of rights protections is coupled with the fact that immigrants tend to work in risky industries such as construction and agriculture where sufficient safety equipment may not be provided. Nine hundred and ninety Latinos died on-the-job in 2006.¹⁷⁰ In 2008, Mexican-born workers accounted for 42 percent of fatal injuries while working.¹⁷¹

¹⁶⁸ Ibid., p.14.

¹⁶⁹ Ibid., p.15.

¹⁷⁰ Ibid., p.9.

¹⁷¹ Ibid., p.9.

Even with these statistics detailing an incomplete, misguided, and inefficient border enforcement strategy that causes illegal immigration, dangerous conditions for illegal immigrants, and problems for native-born workers, Congress has failed to produce legislation that will combat and solve these issues. The “pulls” by the United States have remained, and it is clear that border enforcement does not deter, but in fact worsens the illegal immigration problem for the United States.

VIII. Refugee Admissions

The *Refugee Act of 1980* amended the *Immigration and Nationality Act of 1965 (INA)* to define a “refugee” as “any person who is outside of any country of such person's nationality ... who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”¹⁷² The annual number of refugees permitted to enter the United States is split into specific regions; and the President, with advice from Congress, sets the caps that begin at the start of each fiscal year. In Fiscal Year (FY) 2012, the worldwide ceiling was 76,000.¹⁷³ Ninety-six percent of the worldwide limit is given to the five major regions, while the remaining four percent is assigned for reserve in case of a situation causing an excess in any region. For

¹⁷² *The Refugee Act* (Pub. L. 96-212) 1980, § 101(a)(42)

¹⁷³ Andorra Bruno, *Refugee Admissions and Resettlement Policy*, (Washington, D.C.: Congressional Research Service, 2012), p.4.

FY2012, the regional caps were: Africa (12,000), East Asia (18,000), Europe and Central Asia (2,000), Latin America/Caribbean (5,500), and Near East/South Asia (35,500).¹⁷⁴

A. Statistics on Refugees

Refugee admissions are an important part of the U.S. immigration system. From FY2001 to FY2011, over 500,000 refugees were granted asylum in the United States under the U.S. refugee policy. However, the U.S. refugee program has changed during this time period. After the terrorist attacks of September 11, 2001, the number of refugees admitted in FY2002 showed a sharp drop. This was the result of a suspension of the program, and the eventual heightened security procedures by the Immigration and Naturalization Service (absorbed by the Department of Homeland Security). From FY2001 to FY2002, the number of refugees granted asylum dropped from 69,304 to 27,131.¹⁷⁵ FY2003 did not show much of an increase, as only 28,404 refugees were accepted.¹⁷⁶ The following table demonstrates the drop in refugees admitted and the eventual increase from FY2003 to FY2004.

¹⁷⁴ Ibid., p.4.

¹⁷⁵ Ibid., p.2.

¹⁷⁶ Ibid., p.2.

Appendix. Refugee Admissions by Region, FY1987-FY2011

FY	Africa	East Asia	Eastern Europe	Former Soviet Union	Latin America/ Caribbean	Near East/ South Asia	Total
1987	1,990	40,099	8,396	3,699	323	10,021	64,528
1988	1,593	35,371	7,510	20,411	3,230 ^a	8,368	76,483
1989	1,902	45,722	8,752	39,602	4,116 ^a	6,976 ^a	107,070
1990	3,453	51,604 ^a	6,094	50,628	5,308 ^a	4,979	122,066
1991	4,420	53,522	6,837	39,226	4,042 ^a	5,342	113,389
1992	5,470	51,899	2,915	61,397	3,947 ^a	6,903	132,531
1993	6,967	49,817	2,582	48,773	4,322 ^a	6,987	119,448
1994	5,860	43,564	7,707	43,854	6,156	5,840	112,981
1995	4,827	36,987	10,070	35,951	7,629	4,510	99,974
1996	7,604	19,321	12,145	29,816	3,550	3,967	76,403
1997	6,065	8,594	21,401	27,331	2,996	4,101	70,488
1998	6,887	10,854	30,842	23,557	1,627	3,313	77,080
1999	13,043	10,206	38,658	17,410	2,110	4,098	85,525
2000	17,561	4,561	22,561	15,103	3,232	10,129	73,147
2001	19,021	3,725	15,777	15,748	2,973	12,060	69,304
2002	2,551	3,512	5,459	9,969	1,934	3,706	27,131
2003	10,715	1,724	2,506	8,744	455	4,260	28,404
2004	29,104	8,084	9,254 ^b		3,577	2,854	52,873
2005	20,745	12,076	11,316 ^b		6,699	2,977	53,813
2006	18,126	5,659	10,456 ^b		3,264	3,718	41,223
2007	17,483	15,643	4,560 ^b		2,976	7,620	48,282
2008	8,935	19,489	2,343 ^b		4,277	25,147	60,191
2009	9,670	19,850	1,997 ^b		4,857	38,280	74,654
2010	13,305	17,716	1,526 ^b		4,982	35,782	73,311
2011	7,685	17,367	1,228 ^b		2,976	27,168	56,424

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Refugee admissions again dropped dramatically from FY2010 to FY2011 due to enhanced security requirements. According to the Congressional Research Service, “Admission total[s] will be lower ... due largely to the introduction of additional security checks during the year,

¹⁷⁷ Ibid., p.11.

including pre-departure checks shortly before refugees travel to the U.S., instituted mid-year, that enhance the vetting of applicants against intelligence and law enforcement information. While these checks caused a slowdown in refugee arrivals, the checks reflect the Administration's commitment to conduct the most thorough checks possible to prevent dangerous individuals from gaining access to the United States through the refugee program. Arrival numbers began to rebound in June and July [of 2011] and we expect arrivals in FY2012 approaching the proposed ceiling.”¹⁷⁸ The improved security on refugee resettlement attempts to better weed out those who wish to harm the United States, while creating a verification process that better allows the entrance of those who are truly in need of asylum.

B. The Process of Admitting a Refugee

The U.S. Department of State is in charge of processing refugee applications; however, the department usually seeks the aid of a non-governmental organization (NGO) or an international organization in managing a Resettlement Support Center (RSC). An RSC pre-screens refugees through an interview process and prepares each case to be submitted to the United States Citizen and Immigration Services (USCIS). Once the case is given to USCIS, they must adjudicate. To do this, there is a two-priority system that has “separate and distinct” levels in order to determine if a person qualifies for refugee status under the *INA*. *Priority One* refugees are those referred to the U.S. refugee program by the United Nations Refugee Agency, a U.S. embassy, or specific NGOs. These refugees are extraordinary cases where protection is undoubtedly required due to impending danger or attack unless admitted. Refugees from all

¹⁷⁸ Ibid., p.2.

nationalities qualify to be granted asylum under this priority. *Priority Two* deals with refugees who require special humanitarian focus. For example, there were Iranian religious minorities that were in refugee camps in Austria and Turkey. These refugees need not be referred by the United Nations Refugee Agency, a U.S. embassy, or specific NGOs.

The United States Citizenship and Immigration Services (USCIS) adjudicates refugee applications. There two major reasons a prospective refugee is deemed inadmissible: health and national security. If the Department of Health and Human Services finds there is a disease that could cause significant public health issues, the refugee applicant will be denied. Additionally, the process to determine if a refugee has participated, or will participate, in any groups that have threatened the national security of the United States has been made much stricter in order to prevent the admission of a terrorist.

IX. The Need for Reform

U.S. immigration policies have failed. Despite restrictions on opportunities for legal entry and surging border enforcement funding, the U.S. population of people born in Latin America has increased significantly. The intentions of Congress and federal initiatives have only made matters worse. Congress has clearly not put the essential care and thought in immigration legislation to account for underlying dynamics of evolving social and economic change. In the 1960s and 1970s, Congress began a history of failing to create legislation that adjusted to the demand of migration, and the strong momentum it creates. Stated earlier in Chapter Two of the thesis (“History of U.S. Immigration”), Congress failed to see that immigration had a far-

reaching impact on the economy, workforce, and society. As in other areas of society and economies, Congressional intervention without complete understanding of dynamic shifts tends to cause unintended consequences. Immigration, maybe now more than ever, is a salient issue in the national spotlight. Even though recent economic troubles for the United States have diverted attention of the American people, immigration is undoubtedly in need of robust reform. The next chapter of this thesis will present several reform arguments for all parts of immigration and attempt to discern what is best for U.S. immigration and economy in the long-run.

CHAPTER IV: Necessary Change

Immigration Reform and the Challenge Ahead

*“Finally, if we’re serious about economic growth, it is time to heed the call of business leaders, labor leaders, faith leaders, law enforcement — and fix our broken immigration system. Republicans and Democrats in the Senate have acted, and I know that members of both parties in the House want to do the same. Independent economists say immigration reform will grow our economy and shrink our deficits by almost \$1 trillion in the next two decades. And for good reason: When people come here to fulfill their dreams — to study, invent, contribute to our culture — they make our country a more attractive place for businesses to locate and create jobs for everybody. So let’s get immigration reform done this year.”*¹⁷⁹

- President Barack Obama

I. The Debate on Reform

Immigration reform is necessary. The government and its constituents understand the current system is broken. A gridlocked Congress has blocked meaningful reform, and the United States has paid the price. In 2013, the Senate passed the *Border Security, Economic Opportunity, and Immigration Modernization Act* (S.744). This bill, while not perfect, was an encouraging start to reshape immigration. The Senate addressed and attempted to encompass each issue in a way that was sensitive to dynamic change. An analysis of S.744 is useful to begin the process of reform. However, policy institutes and experts have their own opinions, which carry influence in Congress.

Senate Democrats made a compromise to receive amnesty for illegal immigrants in S.744 in order for Senate Republicans to implement a robust immigration enforcement strategy. This accord has yet to be struck by the House of Representatives. A Republican-controlled House rejects amnesty with a path to citizenship, and puts securing the nation’s borders as the top

¹⁷⁹ Barack Obama, “State of the Union Address” (speech, Washington, D.C., January 29, 2014), The Washington Post, <http://www.washingtonpost.com>

priority. On January 30, 2014, the Grand Old Party (GOP) released its set of principles moving forward on immigration. The party's leadership stated "border security and interior enforcement must come first."¹⁸⁰ Similarly, Republican leadership detailed the necessity for an "entry-exit visa tracking system," "employment verification and workplace enforcement," "reforms to the legal immigration system," and a solution for "individuals living outside the rule of law."¹⁸¹ These principles are similar to those outlined in S.744; however, how to approach them is the key issue. For example, Republicans are calling for a bill-by-bill approach rather than a comprehensive bill such as S.744. Similarly, Republicans put border security and interior enforcement as the top priority, while Democrats put amnesty and improved legal immigration methods at the forefront. Republicans will not allow amnesty or legal immigration methods until the "triggers" of completely secure borders and interior enforcement are met. As the text of the principles released on January 30, 2014 assert, "none of this can happen before specific enforcement triggers have been implemented to fulfill our promise to the American people that from here on, our immigration laws will indeed be enforced."¹⁸² Despite the GOP following principles many conservatives agree on, several "conservative hard-liners inside Congress and out are already stepping up resistance to anything that could be deemed 'amnesty.'"¹⁸³ In a different way, immigration advocates reject the GOP principles for the omission of a path to citizenship for illegal immigrants.

¹⁸⁰ "Text of Republicans' Principles on Immigration," The New York Times, January 30, 2014, <http://www.nytimes.com>.

¹⁸¹ Ibid., p.1.

¹⁸² Ibid., p.1.

¹⁸³ Josh Richman and David E. Early, "Immigration debate: Even with both sides at the table, reform remains a complex goal," San Jose Mercury News, January 30, 2014, <http://www.mercurynews.com/>.

Several conservative institutes — i.e. American Action Forum and Americans for Tax Reform — disagree with the GOP’s approach to immigration reform, urging them to compromise on a bill that mirrors S.744. H.R.15, proposed by House Democrats, is the form in which these groups argue reform is most possible. The institutes argue that increased immigration will lead to accelerated growth and a significant cut to the federal budget deficit. As previously stated, the American Action Forum (AAF) has asserted that comprehensive immigration reform would reduce the national debt by \$2.5 trillion over the next decade. Groups such as AAF, believe immigrants are an important part of the country’s future. Douglas Holtz-Eakin, the president of AAF, said in an interview that we must “acknowledge the value” of immigrants. Other conservative and libertarian groups concur, including the Cato Institute and Americans for Tax Reform (ATR). Despite consistent arguments by Republicans and other conservative groups (i.e. the Heritage Foundation) that immigrants would hurt the American workforce and wages while increasing the national debt, ATR, Cato, and AAF are charging right back. AAF has produced positive analysis of an increase in workforce participation. Expanding immigration, according to Holtz-Eakin, would “raise GDP [Gross Domestic Product] growth from an average of three percent annually to 3.9 percent over the course of a decade.” The increase in GDP is due to “a difference of \$64,700 per capita versus \$62,900 per capita ... [which is] a core benefit [from] immigration reform.” This is where dynamic scoring becomes important. Several conservative groups have argued that Republicans ignore dynamic scorings for immigration and that the Heritage Foundation has completely abandoned such scoring methods in their analysis of S.744. Republicans have called on the CBO to score tax-cut bills with dynamic estimates; however, do not do the same for immigration. This is the fundamental debate amongst conservatives: to use

dynamic scoring or not to use dynamic scoring. Different methods have yielded significantly contrasting stories about the effects of S.744 on the United States.

The core issues that Republicans and Democrats disagree on are not the only roadblocks. There is an enormous divide in the Republican Party between its more conservative members (Tea Partiers) and its moderate members. While Republicans control the House, compromise must first come within the party before working with Democrats. Thereafter, where there is an accord between Republicans and Democrats, accepted forms of implementation and language for the bill will cause problems. The biggest examples are a work verification system, such as E-Verify from S.744, and legal immigration. While both sides agree reform is necessary in these areas, lengthy compromise will be needed to solve disputes such as: privacy concerns with providing extensive data to the government, and how to overhaul current legal immigration visa programs and laws to protect U.S. workers while providing necessary channels for skilled and unskilled workers.

Several policy institutes and experts have shared their thoughts on the Corker-Hoeven amendment — named after the authors of the amendment Senators Bob Corker (R-TN) and John Hoeven (R-ND) — and S.744's attempt at securing the border. Bill Ong Hing, a Professor of Law at the University of San Francisco, wrote an article for the Huffington Post warning how S. 744 would “exacerbate the immigration death trap.”¹⁸⁴ According to Hing, “as many as six thousand people have died trying to cross the U.S.-Mexico border since the institution of Operation Gatekeeper under the Clinton administration.”¹⁸⁵ Operation Gatekeeper was a

¹⁸⁴ Bill Ong Hing, “Corker-Hoeven Provision Would Exacerbate the Immigration Death Trap,” The Huffington Post, November 11, 2013, <http://www.huffingtonpost.com>.

¹⁸⁵ Ibid., p.1.

measure implemented in 1994 to prevent illegal immigration and encourage safety near the San Diego, California border. However, the plan did not increase safety; and the incredibly high number of border crossing deaths is a moral issue, one that the United States has failed to address. Hing says the fatalities are “avoidable” and that the operation did not deter immigrant inflows as intended. Instead, Operation Gatekeeper funneled the immigrants through the most dangerous areas of the desert and mountains, resulting in an increase of less than 30 migrant deaths in 1994, to 477 in 2012.¹⁸⁶ Despite the dangers, migrants continued to attempt illegal entry due to a deeply broken economy in Mexico. This incredibly important issue is one that politicians are aware of; yet, Hing asserts that Congress did nothing to fix it with S.744. He writes that the Corker-Hoeven amendment would not only “expand Operation Gatekeeper,” “the militarization of the border” would do nothing to address the “socio-economic phenomenon” that causes “travel patterns between Mexico and the United States.”¹⁸⁷ Hing contends that Congress should assess push-pull factors and implement a solution that addresses the economic situations of both Mexico and the United States.

Alex Nowrasteh of The Cato Institute, an American libertarian think tank, agrees with Hing. In the article “The Border Security Obsession,” Nowrasteh argues “immigration is mainly an economic phenomenon,” but that Congress is fixated on throwing money at border security.¹⁸⁸ As evidence, he cites the Corker-Hoeven amendment, which would “double the size of border

¹⁸⁶ Ibid., p.1.

¹⁸⁷ Ibid., p.1.

¹⁸⁸ Alex Nowrasteh, “The Border Security Obsession,” The Cato Institute, June 24, 2013, <http://www.cato.org>

patrol and place an absurd array of technology and fencing on the southern border.”¹⁸⁹

Nowrasteh asserts an amplified legal low-skilled guest worker program would provide incentives to migrate legally and discourage dangerous illegal inflows. Additionally, putting this system in place would allow Border Patrol to “weed out the criminals, national security threats, and sick people from the vast majority of willing peaceful workers.”¹⁹⁰ Nowrasteh cites the Bracero Program as evidence that such a program is possible. “In the early 1950s ... after arresting unlawful immigrants, Border Patrol drove them down to the Southern border and immediately let them enroll in the Bracero Program, allowing them to return to their jobs.”¹⁹¹ Nowrasteh argues that since “unlawful immigration dropped by more than 90 percent in the following years,” a guest-worker program (for more sectors than simply agriculture) would “overwhelmingly” help the illegal inflows that are the focus of many Americans.¹⁹² The Cato Institute maintains that a guest worker program would be more effective than the proposed \$5 billion per year in border security spending, and allow for border enforcement agencies to focus on more important efforts.

In an article entitled “The Corker-Hoeven Amendment is a Mirage” by Julie Kirchner of the Federation of American Immigration Reform, Kirchner argues the Corker-Hoeven amendment “does little to improve the border security provisions in the bill and also includes provisions that would seriously undermine immigration enforcement.”¹⁹³ She provides several examples of how the Corker-Hoeven amendment is weak, and hinders other provisions. For instance, the

¹⁸⁹ Ibid., p.1.

¹⁹⁰ Ibid., p.1.

¹⁹¹ Ibid., p.1.

¹⁹² Ibid., p.1.

¹⁹³ Julie Kirchner, “The Corker-Hoeven Amendment is a Mirage,” The Federation for American Immigration Reform, June 23, 2013, <http://immigrationreform.com>.

amendment requires a plan that deploys specific technologies “for each Border Patrol sector along the Southern border” without mandating the Department of Homeland Security (DHS) “to deploy the technologies and resources listed.”¹⁹⁴ The bill leaves the implementation and allocation of such technologies up to the judgement of the Secretary of DHS. There are several instances where provisions do not explicitly require DHS to enforce such laws.

Senator Bob Corker wrote an article on his website called “The Hoeven-Corker Amendment: Myth vs. Fact” in response to each criticism of the amendment and to clear the air on the “myths” opposers of the amendment had spoke of. Corker argues that the amendment “contains tangible, concrete triggers which ensure that Registered Provisional Immigrants (RPIs) cannot receive green cards until at least 10 years after the enactment of the bill, AND the Secretary of Homeland Security, in consultation with the Attorney General, the Secretary of Defense, the Inspector General, and GAO [Government Accountability Office], certifies that” all provisions are enacted to the full extent the law provides.¹⁹⁵ Similarly, Corker wanted to dispel the notion that S.744 allows for instant amnesty. He explains that “ALL FIVE” of the “triggers” in the Corker-Hoeven amendment would need to be implemented “AND at least 10 years have passed” until RPIs would be allowed to apply for a green card.¹⁹⁶ Among his claims to backup the amendment, he cites the Washington Post Fact Checker and PolitiFact.com as sources that have confirmed the bill could be strict in requiring exercise of provisions.

¹⁹⁴ Ibid., p.1.

¹⁹⁵ Bob Corker, “The Hoeven-Corker Amendment: Myth vs. Fact,” June 2013, The United States Senate, <http://www.corker.senate.gov>.

¹⁹⁶ Ibid., p.1.

Ronald W. Mortensen of the Center for Immigration Studies wrote a response to Corker's article about the "myths" experts such as Hing, Nowrasteh, and Kirchner had argued. The column, entitled "Hoeven-Corker Amendment: Long on Amnesty, Short on Everything Else," was another criticism of the bill's inability to require tight language on provisions and meaningful border security. Mortensen asserts that S.744 is similar to the 1986 *Immigration Reform and Control Act* in that it promised future strict and extensive border security and better mechanisms to prevent employment of illegal aliens in order to grant amnesty to illegals already in the country. However, Mortensen details the flaws in these promises. For example, Mortensen argues "the bill grants amnesty to 11 million illegal aliens ... [and that] the borders will never be secured because once illegal aliens have legal status, they and their supporters know that citizenship will eventually be granted whether the border is secured or not."¹⁹⁷ Similar to concerns by Democrats, the bill doesn't implement any metrics to gauge the success — or lack thereof — of the significant inputs allotted. Another instance Mortensen uses is the E-Verify program. The bill allows illegal immigrants to gain RPI status "almost immediately," while E-Verify is not fully implemented for five years.¹⁹⁸ This discrepancy in years creates a new wave of immigrants that will not be screened under the E-Verify program. The issue of nonimmigrants receiving federal benefits is not resolved either, according to Mortensen. S.744 would restrict "certain" nonimmigrant visa holders from receiving federal benefits, but as Mortensen argues, "certain" does not specify the people eligible or how many.

¹⁹⁷ Ronald W. Mortensen, "Hoeven-Corker Amendment – Long on Amnesty, Short on Everything Else," June 2013, The Center for Immigration Studies, <https://cis.org>.

¹⁹⁸ Ibid., p.1.

The Heritage Foundation, a prominent conservative think tank in Washington, D.C., furthers the arguments against S.744. In a report on June 21, 2013, Heritage detailed its “Top 10 Concerns” of *BSEOIM*. S.744’s approach to amnesty and border security, the burden for taxpayers, and the bill’s “loopholes and ambiguity” were stressed as failures by Heritage. The think tank also cites the 1986 *Immigration Reform and Control Act (IRCA)* as another mass-amnesty bill that failed to provide results. According to Heritage, while *IRCA* was presented as “a one-time thing,” the “unlawful immigrant population in the United States has nearly quadrupled,” leaving Congress poised to provide amnesty once again.¹⁹⁹ Heritage also says that the December 31, 2011 cut-off date for amnesty will “[create] massive opportunity for fraud, since there is no proof required that applicants have been in the U.S.” before that date.²⁰⁰ The biggest issue that several conservatives have, including the Heritage Foundation, is that “amnesty would teach precisely the wrong lesson to America’s unlawful immigrants and the culture at large. The message of amnesty is: When a group of people who have violated the law grows too big to prosecute, the U.S. will simply change the law to accommodate them ... undermin[ing] the rule of law, particularly since it would be the second blanket amnesty in about a quarter century.”²⁰¹ Heritage continues the criticism of the article with the issue in immigration reform that conservatives have at the top of their list: border security. According to Heritage, Americans have seen the same “exchange” of border security for amnesty before. In 1986, *IRCA* created a similar agreement; however, S.744 “lavishes billions of additional spending on the DHS with no

¹⁹⁹ “The Senate’s Comprehensive Immigration Bill: Top 10 Concerns,” June 2013, The Heritage Foundation, <http://www.heritage.org>.

²⁰⁰ *Ibid.*, p.1.

²⁰¹ *Ibid.*, p.1.

clear requirements on how the money is to be spent.”²⁰² This echoes the sentiments of many skeptics about the bill’s effectiveness due to serious ambiguity and loopholes. The issue of cost to taxpayers is seriously examined by Heritage. The reports claims that “amnesty will cost taxpayers trillions of dollars” due to a higher contribution in taxes than received government benefits.

In another report entitled “The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer,” Heritage authors Robert Rector and Jason Richwine, Ph.D. argue that “amnesty would increase net governmental costs by perhaps \$6.3 trillion.”²⁰³ This estimate has been widely rejected by several conservative groups, think tanks, and politicians. According to the Cato Institute, a 2007 Heritage Foundation report entitled “The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer” used “flawed methodology [and] produced a grossly exaggerated cost to federal taxpayers of legalizing unauthorized immigrants while undercounting or discounting their positive tax and economic contributions – greatly affecting the 2007 immigration reform debate.”²⁰⁴ Other conservative groups agree Heritage once again was incorrect with its fiscal predictions. Grover Norquist of Americans for Tax Reform and the Cato Institute wrote in a letter to House and Senate Immigration personnel in April:

*“Robert Rector’s work does not speak for the conservative movement; in fact, it does not even speak for the Heritage Foundation.”*²⁰⁵

²⁰² Ibid., p.1.

²⁰³ Robert Rector and Jason Richwine, Ph.D., “The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer,” May 2013, The Heritage Foundation, <http://www.heritage.org>.

²⁰⁴ Alex Nowrasteh, “Heritage Immigration Study Fatally Flawed,” April 2013, The Cato Institute, www.cato.org.

²⁰⁵ Abby D. Phillip, “Critics Doubt Immigration Overhaul Would Cost Trillions,” May 2013, ABC News, <http://abcnews.go.com>.

Similarly, Josh Culling with Americans for Tax Reform said:

*“Though Heritage is a treasured ally of [Americans for Tax Reform], this report looks only at the cost side and ignores the economic benefits.”*²⁰⁶

Other conservative groups believe that Heritage lacked a dynamic scoring of the bill, which would have assessed the impact of amnestied immigrants over time. Mario Lopez, president of the Hispanic Heritage Fund, a conservative advocacy group, argued:

*“Not using a dynamic model is a failure to acknowledge that capitalism exists ... One part of the economy doesn’t stay the same when another changes.”*²⁰⁷

Furthering the argument against Heritage’s negative report on S.744, Doug Holtz-Eakin, president of the American Action Forum, a conservative policy institute, said:

*“According to this report, there is no American Dream ... It’s not realistic — not all immigrants will be eligible for benefits and not all want to be citizens. It’s basically saying they will all start in poverty, end in poverty and their children will live in poverty.”*²⁰⁸

In fact, the American Action Forum estimates S.744 would cut the deficit by as much as \$2.5 trillion dollars.²⁰⁹ However, arguments against the Heritage Foundation’s score of the bill are not limited to conservative groups and think tanks. In a statement released on June 27, 2013 by Angela Maria Kelley, Vice President for Immigration Policy at the liberal think tank Center for American Progress (CAP), praised the Senate’s version of *BSEOIM*:

²⁰⁶ Adrian Carrasquillo, “Conservative groups blast Heritage foundation’s \$6.3 trillion ‘amnesty cost,’” May 2013, NBC Universal, <http://nbclatino.com>.

²⁰⁷ Ibid., p.1.

²⁰⁸ Ibid., p.1.

²⁰⁹ Aaron Blake and David Nakamura, “Heritage: Immigration bill would cost \$6.3 trillion,” The Washington Post, May 6, 2013, <http://www.washingtonpost.com>.

*“The bill passed today reflects the will of the American people and meets the needs of our nation today and in the future by including a path to citizenship for the 11 million undocumented immigrants in our country; along with a strategy to address future immigration so we aren’t having this debate again in 10 years ... This bill will also reap economic benefits whose ripple effects will help improve the economic standing of millions of Americans.”*²¹⁰

On February 5, 2014, recent optimism over immigration reform in the House of Representatives had a setback. In an article by the Associated Press, conservative Republicans stated that immigration legislation in the House would not come in 2014. The GOP — which currently controls the House and feels momentum is on its side going into the mid-term elections this upcoming year — believe the party should wait until next year when it could potentially control the Senate. While the Obama Administration has made immigration reform one of its top priorities for the second term, conservative Republicans seem unwilling to work with Democrats until after the mid-term elections. Representative Raul Labrador (R-ID) was one of eight House members who worked on bipartisan immigration legislation in 2013, but walked away from negotiations. He said:

*“I think it's a mistake for us to have an internal battle in the Republican Party this year about immigration reform ... I think when we take back the Senate in 2014 one of the first things we should do next year after we do certain economic issues, I think we should address the immigration issue.”*²¹¹

²¹⁰ Crystal Patterson, “STATEMENT: CAP’s Angela Kelley on Senate Passage of S. 744,” June 2013, Center for American Progress, <http://www.americanprogress.org>.

²¹¹ “House conservatives: No immigration reform in 2014,” February 2013, CBS News, <http://cbsnews.com>.

Senate Minority Leader Mitch McConnell (R-KY) expressed his doubt for immigration legislation in 2014:

*“I don't see how you get to an outcome this year with the two bodies in such a different place ... [It's an] irresolvable conflict.”*²¹²

The key difference between comprehensive immigration that the Senate favors and the bill-by-bill approach House Republicans want to enact is a major point of contention. With elections hanging in the balance, the GOP aims to secure their seats before drafting any legislation that would show a divide in the party or upset the American people.

Despite serious disagreements, there must be an objective analysis done on S.744. What is in the bill? While each side of the aisle has their own opinions on how the bill will affect the economy, workforce, and national debt, one must look at the bill itself.

II. S.744 and its Potential

The *Border Security, Economic Opportunity, and Immigration Modernization Act (BSEOIM)* was passed by the Senate on June 27, 2013. The bill is extensive, attempting to drastically change the broken immigration system. Border enforcement would continue to see a dramatic surge while visa appropriations and other issues are tackled in an attempt to fix current backlogs. Each part of the bill is vital to understand how “The Gang of Eight” (the eight Senators who sponsored the bill) attempted to comprehensively reform immigration. One

²¹² Ibid., p.1.

provision does not stand alone. Instead, border security is affected by new legal immigration channels.

A. The Militarization of and Exorbitant Spending on Border Security

S.744 not only increases border enforcement, it militarizes it. Despite evidence that border enforcement played a significant role in the increased levels of illegal immigration, the Senate added the Corker-Hoeven amendment. Senate leaders believe the Corker-Hoeven amendment would change past issues with border security through a comprehensive approach. With improved channels of legal immigration and the elimination of backlogs, border enforcement would not be the cause of reduced “circularity.” This claim is disputed by several Congresspeople and outside actors. Circularity refers to the process by which immigrants come to the United States, and then leave, repeating the process. This was most efficient during the Bracero Program; however, with border security funneling illegal immigrants through the most dangerous parts of the border and making it more difficult to return back to the United States, it has unintentionally caused more illegal immigrants to stay in the United States. Thus, the reduced circularity of immigration. This amendment would lead to unprecedented levels of financial appropriations for border security; however, several Republican senators — members of the party that is most in favor of robust border security efforts — are against the Corker-Hoeven amendment. Tom Coburn (R-OK) said:

“The biggest deficit that the Senate has in my mind is failure to put teeth into things they know will actually fix the problems in this country ... This bill has no teeth. This bill has \$48 billion

*thrown up against the wall to buy the vote to say we are going to have a secure border, when in fact we will not.”*²¹³

Similarly, Senator David Vitter (R-LA) asserted:

“I think this amendment is designed to pass the bill, but not to fix the bill ... I say the amendment is designed that way for two reasons. First of all, as has been noted, it’s all about inputs.

There’s no metric, there’s no measure of actual achievement.”

The lack of metric-based achievement records is an area of significant concern. Democrats in the House of Representatives made sure to add this to their proposed bill, H.R.15, discussed later in this chapter.

The Heritage Foundation released a report entitled “Corker–Hoeven Immigration Amendment: Far from a Game Changer,” which criticized the Corker-Hoeven amendment as weak and unable to create meaningful change in border protection and security. The think tank says that the triggers in the bill are “false” and “would allow millions of illegal immigrants to receive amnesty now, and then maybe we will get to securing the border somewhere down the road.”²¹⁴ Additionally, Heritage does not believe the bill would do much to stop illegal immigrants overstaying their visas — which accounts for “about 40 percent of illegal immigrants.”²¹⁵

The Center for American Progress (CAP) disagrees with this analysis. The think tank provided its full support of the bill. In a report on June 27, 2013 entitled “The Top 5 Things the

²¹³ Jim Avila, Serena Marshall, and Shushannah Walshe, “Immigration Overhaul Clears Pivotal Vote in Senate,” June 2013, ABC News, <http://abcnews.go.com>.

²¹⁴ Jessica Zuckerman and David Inserra, “Corker–Hoeven Immigration Amendment: Far from a Game Changer,” June 2013, The Heritage Foundation, <http://blog.heritage.org>.

²¹⁵ Ibid., p.1.

Senate Immigration Reform Bill Accomplishes,” CAP detailed the major improvements to border security, paths to citizenship and legal status, family reunification, and the economic impact. While CAP recognizes that S.744 “militarizes the border,” it provides reasons why the Senate’s resolution created a more objective metric. According to the Immigration Team at CAP, the Corker-Hoeven amendment “blocked other efforts” that are more subjective.²¹⁶ CAP argues that since the amendment is based on assigned numbers, — i.e. the number of Border Patrol agents hired, miles of fence built, technology deployed, etc. — it removes the possibility for future “manipulation” by an administration.²¹⁷ It is clear that the House and Senate disagree on a metric that would adequately result in — and track — success. This disunity will be demonstrated later in the chapter with the analysis of House Democrats’ proposal of H.R.15.

CAP also praises the Senate for their enhanced paths to citizenship and removal of unnecessary restrictions on DREAMers. According to the think tank, S.744 provides an “achievable path to citizenship” while protecting the United States. Amnesty is not easily granted, as an illegal immigrant must jump through several hurdles. However, CAP estimates that over nine million people will be eligible for the new Registered Provisional Immigrant status.²¹⁸ The report also details improvements to the process of granting DREAMers LPR status. “S. 744 contains no age cap, which means that even DREAMers who have been waiting for more than a decade and are now in their 30s or older can still qualify.”²¹⁹

²¹⁶ Center for American Progress Immigration Team, “The Top 5 Things the Senate Immigration Reform Bill Accomplishes,” June 2013, Center for American Progress, <http://www.americanprogress.org>.

²¹⁷ Ibid., p.1.

²¹⁸ Ibid., p.1.

²¹⁹ Ibid., p.1.

CAP asserts its support for one of the most important provisions of the bill: Section 2302.

“Section 2302 of the bill clears out this long backlog over a period of nine years by dividing up the number of people waiting each year and granting that many additional visas each year.”²²⁰

The elimination of family-based backlogs is a crucial issue as many reports have indicated undocumented immigrants have entered the United States illegally because they cannot wait to be allowed legally. Therefore, Senate leaders implemented Section 2302 to complement other legal channels in order provide a disincentive to cross the border illegally.

Finally, CAP issues its support for the CBO’s scoring of the bill. “With the Congressional Budget Office scoring of the bill, it is clear that reform has powerful economic benefits.”²²¹ CAP clearly disagrees with Heritage in this regard. While Heritage warns of serious economic burdens, objective sources such as the CBO have demonstrated positive effects stemming from S.744.

Despite disagreements inside and outside the Senate, S.744 was passed with the Corker-Hoeven amendment. *BSEOIM* allots \$46.3 billion in initial funding in order to implement the act.²²² In addition to the funding by Congress, visa and other user fees will help provide financial support. The Senate also included a \$30 billion dedication for over the next ten years in order to hire and deploy an additional 19,200 Border Patrol agents.²²³ Of the \$30 billion, \$8 billion will be allotted for the Southern Border Fencing Strategy, of which \$7.5 billion will be dedicated to the deployment and maintenance of fencing and \$750 million will be allocated to

²²⁰ *Ibid.*, p.1.

²²¹ *Ibid.*, p.1.

²²² *Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) 2013*, § 6(a)(3)(A)

²²³ *Ibid.*, § 6(a)(3)(A)(i)

the implementation and expansion of E-Verify.²²⁴ \$4.5 billion will be proportioned out for the Comprehensive Southern Border Security Strategy, and — if necessary — \$2 billion will be dedicated to the implementation of recommendations made by the Southern Border Security Commission.²²⁵ The investments in border security are as follows: deploying a minimum of 38,405 full-time Border Patrol agents along the southern border (19,200 more than currently stationed there); an electronic exit system at all ports where Customs and Border Protection (CBP) agents are deployed; at least 700 miles of new fencing that includes double fencing; an increase in mobile surveillance; the deployment of more aircraft and radio communications; construction of additional Border Patrol stations and operating bases; the hiring of more prosecutors, judges, and relevant staff; an improved and additional training program for border officers; and an increase in prosecutions of illegal border crossings.²²⁶ The Corker-Hoeven amendment mandates area-specific technology and infrastructure that mimics militarization. Watch towers, camera systems, mobile surveillance systems, ground sensors, fiber-optic tank inspection scopes, portable contraband detectors, radiation isotope identification devices, mobile automated targeting systems, unmanned aircraft, radar systems, helicopters, and marine vessels are all detailed in the amendment.²²⁷ Surveillance must be 24 hours a day using mobile, video, and portable systems, as well as unmanned aircraft such as drones. The amendment clearly attempts to use vast resources to stop illegal immigration. The additional training for Border Patrol agents is necessary in order to be properly equipped to handle such militarization.

²²⁴ *Ibid.*, § 6(a)(3)(A)

²²⁵ *Ibid.*, § 6(a)(3)(A)(ii)

²²⁶ *Ibid.*, § 3(c)(2)(A)

²²⁷ *Ibid.*, § 5(a)(3)

The border is not the only place enforcement is amped up. Interior enforcement against those who choose to over stay their visas is a focus of S.744. This is a major focal point for Republicans in regards to immigration reform, as noted in their principles outline on January 30, 2014. In the bill, a pilot program is mandated in order to notify immigrants that their visa will expire soon. The Department of Homeland Security (DHS) is required to initiate deportation proceedings if the immigrants do not heed the warnings of the government program. Similarly, DHS must confirm that removal is either pending or granted, “or otherwise close 90 percent of the cases of immigrants who have overstayed their visas by more than 180 days in the last 12 months.”²²⁸ The next section details the provisions that attempt to make interior enforcement more effective.

B. Interior Enforcement and E-Verify

The *Border Security, Economic Opportunity, and Immigration Modernization Act* goes to great lengths to ensure immigration laws are strictly enforced and procedural issues are corrected. S.744 would require all employers to use E-Verify — the employment eligibility verification program. E-Verify uses the Employment Eligibility Verification Form I-9 and data from the U.S. government in order to determine if an employer’s employee can legally work for their business. S.744 aims to make the usage of the program mandatory, in an effort to better prevent illegal immigrants from working. E-Verify would be mandatory for all employers five years after the bill passed. In addition, fraud-proof documents — enhanced with tamper-and identity-theft resistant materials — and photo tools would be used. Social security cards would

²²⁸ *A Guide to S.744: Understanding the 2013 Senate Immigration Bill*, (Washington, D.C.: American Immigration Council, 2013), p.2.

be the primary target of this improvement. The employer must use the mechanisms available in order to confirm the identity and employment authorization within three business days after an applicant accepts an offer of employment.

At all air and sea ports, an entry and exit system will be put in place in order to confirm immigrants are leaving when they are required to. All local and state laws related to the hiring of foreign nationals will be superseded by the systems outlined in S.744. With a uniform national standard, the authors of the bill believe it will be easier to track foreign nationals in the country.

The *Border Security, Economic Opportunity, and Immigration Modernization Act* also increases the severity of the penalty for an employer who does not comply with the requirements set forth in the bill. Any employer who knowingly hires, recruits, refers, or employs an illegal immigrant or does not follow the requirements of E-Verify can be criminally or civilly prosecuted. S.744 sets civil fines at \$25,000 per violation, and a criminal violation could land an employer in jail for two years with a fine of up to \$10,000.²²⁹ Similarly, every employer is subject to frequent assessments and audits to determine if the E-Verify system has been misused in a discriminatory way — fraud, identity theft, civil rights, or privacy. An appeals process will be implemented, and the employer may view their information in the system at any time.

C. Immigrant Protections

S.744 attempts to enhance due-process protections in immigration courts and detention facilities as well as toughen the penalties for gang-related convictions and other serious offenses. Current immigration law dictates that immigrants do not have the right to appointed counsel if

²²⁹ *Border Security, Economic Opportunity, and Immigration Modernization Act* (S.744) 2013, § 2404(e)(4)(A)(iii)

they do not have the financial means to hire a lawyer. S.744 requires unaccompanied minor children, immigrants with severe mental disabilities, and other vulnerable individuals to be granted appointed counsel. Additionally, the act would dictate that immigrants are allowed access to government-stored evidence. Immigration judges, court staff, and training programs for both the staff and judges will be increased in order to make the process more efficient.

S.744 prohibits the use of solitary confinement with children and those deemed seriously mentally ill. The bill also enhances oversight of detention facilities, requires efficient custody determination and bond hearings, and outlines how to detain the parents or guardians of a child. The emphasis put on mending the immigration court system comes from the concern of the bill's supporters that due-process protections have deteriorated. Inhumane treatment, insufficient alternatives to detention, and a lack of adequate resources for immigration courts to process cases has led to critical questioning of the current system for several years. The measures taken in S.744 attempt to create a more efficient and cost-effective way to manage a highly complex system.

D. The Controversial “Amnesty” Programs

The *Border Security, Economic Opportunity, and Immigration Modernization Act* details the ways in which an illegal immigrant can gain lawful residency in the United States. The first path is through the Registered Provisional Immigrant Program. S.744 permits undocumented immigrants to apply for Registered Provisional Immigrant (RPI) status if they have resided in the United States since December 31, 2011. Additionally, the illegal alien must be clean of any felonies or three or more misdemeanors and paid their taxes. The application fee must be paid

along with a \$1,000 penalty for their illegal stay in the United States. Spouses and children of RPIs would also be eligible, much like the current Lawful Permanent Residency policy. However, the RPI program has a greater flexibility in judging case-by-case. While many RPI applicants can be denied based solely on immigration status-related offenses, other factors, for example, the current three and ten year bars, would not apply. Therefore, an illegal immigrant who currently would violate the bars set would receive a better chance for admission. Similarly, the judges that would handle the cases would be given greater flexibility in determining if an applicant would promote and strive for the public interest. However, the RPI program would restrict several public benefits of those admitted, such as Medicaid, food stamps, and new provisions under the Affordable Care Act. RPI status would be given for six years; however, it can be renewed based on two criteria: employment and income. If the immigrant can prove that he or she has remained consistently employed (with gaps between work of 60 days or less), then RPI status will be granted once again. However, without this criteria being met, the immigrant must demonstrate that his or her income or resources accrue to more than 100 percent of the poverty level.²³⁰ The RPI status employment requirement has several exceptions: school, maternity leave, medical leave, physical or mental disabilities, children under 21, and extreme hardship (if able to prove). In addition to the base criteria, the immigrant must undergo another background check, pay taxes required, and pay the remaining balance of the \$1,000 penalty if they had not already done so.

S.744 details the transition from Registered Provisional Immigrant status to Lawful Permanent Residence (LPR) status. Lawful Permanent Residency, commonly known as a “green

²³⁰ Ibid., § 2101(c)(9)(B)(ii)

card,” will continue to be used in the immigration system. RPIs can be granted eligibility for LPR status, but RPIs would be put in the back of the line to wait and must be an RPI for a minimum of 10 years.²³¹ All applications for LPR status prior to the enactment of S.744 would need to be processed before RPIs can be afforded the status, as well. LPR status requirements would be similar to that of RPI status — regular employment or average income or resources above 125 percent (25 percent higher than RPI status).²³² Additionally, applicants would have to show they maintained RPI status and paid taxes, pass an additional background check and English proficiency requirement test, and pay the application fee and an additional \$1,000 as a penalty for prior illegal status. Eventually, RPIs can apply for U.S. citizenship. If an immigrant has been present for ten years before LPR status and a LPR for at least three years, he or she may apply. The *Border Security, Economic Opportunity, and Immigration Modernization Act* attempts to create a track to citizenship that is bipartisan. Amnesty, supported more by Democrats, is achieved, but with a long wait. Illegal immigrants who choose the RPI track to legalization would wait at least 13 years before attaining citizenship. This long timeline satisfies both Republican worries over economic issues of amnesty and the overwhelming economic positives of tax revenue from immigrants currently evading taxes. Additionally, the RPI program would address the issue of children brought to the United States illegally.

Undocumented immigrants who came to the United States as children, “DREAMers” as defined by the *Development, Relief, and Education for Alien Minors (DREAM) Act*, are incorporated into the RPI program through the language of S.744. The RPI program would

²³¹ Ibid., § 3(c)(2)(B)(ii)

²³² Ibid., § 2102(b)(3)(A)(ii)

address the special situation of the DREAMers and put them on an accelerated path to LPR status, and thereafter, to citizenship. DREAMers would apply for the RPI track the same as other illegal aliens that have resided in the United States; however, they may apply for LPR status after five years in RPI status, rather than the normal ten years. Additionally, DREAMers may apply for citizenship as soon as they receive their green card, as opposed to the three year wait for regular RPIs. In order to qualify for this accelerated path, the DREAMer must have entered the U.S. before he or she turned the age of 16, have been in RPI status for the required five years, have earned either a high school diploma or GED, have completed at least two years of college or four years of military service, and have passed the necessary English test and background checks for verification. The bill would use also implement a new program for current holes in the U.S. agricultural workforce.

To combat the employment gap in the agricultural sector while helping to prevent illegal immigration into low-skilled areas such as agriculture, S.744 would create a path to legalization based on legislation in the AgJOBS bill. S.744 would allow agricultural workers to apply for an immigrant status called a “blue card.” An agricultural worker must have worked 575 hours or 100 work days of agricultural employment throughout a two-year period ending December 31, 2012 in order to be eligible.²³³ Similarly to other statuses, a penalty would be incurred and a background check required through the same admissibility conditions as RPIs. A blue card would be active for up to eight years, and those under the status would be denied federal means-tested public benefits. After five years, blue-card holders could apply for LPR status if they have

²³³ Ibid., § 2211(a)(1)(A)

continually worked in agriculture and paid all required taxes and fines. Five years after LPR status is granted, they may apply for citizenship.

E. The Reconstruction of Nonimmigrant Visa Programs

The *Border Security, Economic Opportunity, and Immigration Modernization Act* alters nonimmigrant visa programs to provide a wider range of programs and to eliminate a “one-size-fits-all” model that impaired the entrance of the “best and brightest” into the United States. Among the alterations and additions are programs for skilled workers, less-skilled workers, investors, and visitors. The H-1B skilled-worker program is maintained; however, its visa cap is increased and so are its worker protections. An addition to the nonimmigrant visa programs is the new W-visa. The W-visa is intended for less-skilled workers, an area of great concern when dealing with illegal inflows. Similarly, a new investor visa for nonimmigrants would be created in order to aid investors in their contributions to the economy of the United States. All of the alterations and additions are aimed at helping the U.S. economy and labor force while providing pathways for investments, innovation, and fair worker conditions.

The H-1B and L-1 visas, as previously explained in the previous chapter, are intended for foreign workers that are highly skilled. Science, technology, engineering, and math (STEM) are the fields in which the United States currently has a critical need. In order to make it easier for people who can contribute in these categories to enter the United States, the H-1B and L-1 visas were improved. S.744 raises the annual H-1B visa cap, a problem that previously caused backlogs in areas that the United States could not afford to be short in. The cap of 65,000 would

be replaced by a fluctuating cap of 115,000 and 180,000.²³⁴ The variation in the cap would allow a formula based on the market (employer demand and unemployment statistics) to determine what level of inflow is best for the economy. In addition to an increase in the visa cap, wage requirements would be elevated and the range that employers must pay H-1B workers would be shrunk. Similarly, employers would need to make extraordinary efforts to recruit U.S. workers before foreign ones. Furthermore, “dependent employers” on the H-1B program would have significant obligations including: a U.S. worker must be offered the job first and no more than 50 percent of the employer’s workforce may be H-1B or L-1 workers. Additionally, a separate and new visa aimed at curbing illegal immigration through low-skilled demand would be introduced with S.744.

S.744 would implement a new W nonimmigrant visa program for less-skilled workers who were non-seasonal and non-agricultural (due to the “blue card”). These workers would include, for example, janitors, maids, etc. The visa would allow admittance for three years (renewable for an additional three years at the end of the first three) and require employment in a non-agricultural sectors. The Bureau of Immigration and Labor Market Research (created by S. 744), would conduct the oversight of the W-visa program — working conditions and workers’ wages — as well as create a complaint process. The key differences between past low-skilled worker visa programs and the new W-visa is the simplification and improved efficiency that increases worker wages, enhances working conditions, and provides for mobility for visa holders in response to labor market needs. These workers, according to S.744, apply for LPR status using “Tier 2” of the new “Track 1” merit-based point system outlined in the next section

²³⁴ Ibid., § 4101(a)(4)

(“Reforms to Legal Immigration”). S.744 goes further in attempting to create jobs by allowing a visa for investors.

Another goal of S.744 is to create a nonimmigrant visa for investors so that they can come to the United States, make good faith investments, and create jobs. These investors help provide jobs in a struggling job market while aiding the overall economy. The new visa, the X-visa, would be given to investors who are able to attract “at least \$100,000 in investment, or have created no fewer than three jobs during a two-year period prior to the application and generated \$250,000 in annual revenue.”²³⁵ The X-visa is granted for three years with possibility of continuing to attain LPR status. The EB-6 visa allows for certain entrepreneurs, those who have businesses that “have created at least five jobs ... received at least \$500,000 in venture capital or investment, or have created at least five jobs and generated \$750,000 in annual revenues in the prior two years,” to apply for LPR status.²³⁶ Like the nonimmigrant visa programs, legal immigration is an important area in need of reform. Experts argue that broken channels are the root of the illegal immigration problem. Creating efficient and fair avenues for those waiting to enter the United States is attempted in S.744.

F. Reforms to Legal Immigration

An important change to legal immigration would be the addition of the merit-based point system that has two paths — or “tracks” — to obtain Lawful Permanent Residence (LPR) status. Track one is designed to allow foreign nationals to accrue points based on several factors: their

²³⁵ *A Guide to S.744: Understanding the 2013 Senate Immigration Bill* (Washington, D.C.: American Immigration Council, 2013), p.10.

²³⁶ *Ibid.*, p.10.

skills, employment history, and education. This new program would dissolve and replace both the siblings and adult married children of U.S. citizens visa and the diversity program. The merit-based point system will be allotted between 120,000 and 250,000 visas each year based on a formula that considers the number of visas requested in the previous year and the unemployment rate.²³⁷ In this system, there would be two tiers. Tier one visas would be given to higher-skilled immigrants who demonstrate advanced educational skills as well as experience; and tier two visas would be given to less-skilled immigrants. The most important factor is how points will be awarded to foreign nationals. Points are based on several factors, including: employment history, education, ability to speak the English language, family ties in the United States, age, and nationality. Each immigrant would be prioritized based on their score, which favors young people with a good education, high-skills, and a proficiency in English. Proponents of the new merit-based point system argue that a shift away from family-based immigration is necessary. In place of the old emphasis, supporters assert that a system related to economic needs and overall benefit to the future of the United States is a better option. However, a system such as this has never been used in the United States, and therefore it remains to be seen if it could work to the advantage of the United States.

Track two of the merit-based system has the purpose of clearing the extensive backlogs that have negatively affected the immigration system. If the bill is passed (although it most likely will not), starting October 1, 2014, family- or employment-based applicants who have had applications pending for five years or more will become eligible for track two of the merit-based

²³⁷ *Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) 2013*, § 2301(a)(1)

system.²³⁸ To do this, an allocation of visas would be given to applicants with pending applications over the course of seven years starting in 2015. Therefore, these immigrants would qualify for LPR status by 2021. Similarly, RPIs who have maintained their RPI status for at least ten years would qualify. S.744 places an emphasis on eliminating backlogs in order to promote legal immigration. Consequently, RPIs would qualify for green cards after those who followed the current system's rules are granted visas.

G. Essential Reforms to Family-Based Immigration

S.744 would begin the shift away from the emphasis on family-based immigration. Merit-based immigration would take center stage, promoting economic incentives in immigration. The bill would eliminate backlogs by 2021, recapture unused visas from previous years, and allow parents of U.S. citizens to bring their minor children when they immigrate. Spouses and children of LPRs under the current family-based system would be exempt from current visa caps and immediately eligible for green cards. However, S.744 would eliminate the visa category for siblings of U.S. citizens, and married children of U.S. citizens who are above the age of thirty would have to follow the new merit-based point system in order to be granted a visa. The annual worldwide cap for family-based immigration would remain at 480,000, minus the visas that would be given to the spouses and children of LPRs.²³⁹

²³⁸ Ibid., § 2302(c)

²³⁹ Ibid., § 2304(c)(1)(A)(i)

H. Reforms to Employment-Based Immigration

The per-country limits on employment-based immigrant visas would be eliminated. These limits have caused substantial backlogs for applicants from countries with higher population, such as China and India. Effectively, employment-based immigration will grant equal access to all foreigners who wish to immigrate. Therefore, the immigrant who demonstrates the best skills would be admitted, regardless of origin. Additionally, specific highly skilled and exceptionally talented immigrants would be exempt from the worldwide cap, such as those who demonstrate “extraordinary ability” or “advanced degrees” in science, technology, engineering, or mathematics (STEM) fields from United States universities. The spouses and children of cap-exempt immigrants would also not be counted against the limit, ensuring that each person allowed into the country on the basis of employment will have a job. The annual worldwide limit on employment-based immigration would stay at 140,000.²⁴⁰

I. Refugee Protections and Increased Flexibility

S.744 makes several changes to the refugee system in the current immigration system. Under current immigration law set forth by the *Illegal Immigration Reform and Immigration Responsibility Act of 1996*, a refugee must apply for asylum within one year of arriving in the United States.²⁴¹ However, the authors of S.744 removed this provision due to evidence that it could hinder a refugee with legitimate claims from being granted protection. Certain refugees

²⁴⁰ Ibid., § 2304(a)(1)(A)(i)

²⁴¹ Marc R. Rosenblum and Ruth Ellen Wasem, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S.744*, (Washington, D.C.: Congressional Research Service, 2013), p.54.

who fear persecution, lack sufficient information, or are affected by other issues beyond their control may miss the one year deadline; and therefore, the bill aims to increase flexibility. S.744 also allows an admitted refugee to bring their spouse and child under a refugee visa.²⁴² Additionally, S.744 allows asylum officers to interview refugees at or near U.S. borders and grant asylum if it is deemed they are fleeing due to a credible fear. This method is designed to eliminate the immediate action of sending a refugee to immigration courts. The Department of Homeland Security (DHS) would be required to “issue work authorization to asylum applicants after 180 days.”²⁴³ Furthermore, the President, along with the Secretary of State and DHS, may allow specific persecuted groups to be admitted to the United States due to an extraordinary humanitarian concern or national interest.

The *Border Security, Economic Opportunity, and Immigration Modernization Act* creates new mechanisms to “tighten refugee and asylum laws and would be especially aimed at national security concerns.”²⁴⁴ For example, Section 3411(a) states:

“Any alien who is granted asylum or refugee status under this Act or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), who, without good cause as determined by the Secretary or the Attorney General, subsequently returns to the country of such alien’s nationality or, in the case of an alien having no nationality, returns to any country in which such alien last habitually resided, and who applied for such status because of persecution or a well-founded fear of persecution in that country on account of race, religion, nationality, membership in a particular

²⁴² Ibid., p.54.

²⁴³ Ibid., p.54.

²⁴⁴ Ibid., p.54.

*social group, or political opinion, shall have his or her refugee or asylum status terminated.”*²⁴⁵

Furthermore, Section 3409 requires increased law enforcement and national security measures for the refugee application process.

Although S.744 has failed to pass the House of Representatives, the provisions proposed attempt to fix problems in current policy that have been detailed in the past by influential politicians and political institutes. Several think tanks, including the American Immigration Council (politically liberal), the Migration Policy Institute (politically independent), and the Center for Immigration Studies (politically conservative), have weighed in. According to the American Immigration Council, “The U.S. must ensure that the systems used to integrate refugees into the United States also afford these refugees adequate legal protections ... [and] protect refugees in the difficult process of becoming permanent residents.”²⁴⁶ The Migration Policy Institute echoed the same issues with current refugee policy, stating:

“The U.S. Refugee Admissions Program (USRAP), a mainstay of this system, faces significant challenges. Security reviews have left refugees in dangerous conditions for lengthy periods and prevented the entry of persons who do not pose security risks. The government entities and nongovernmental organizations (NGOs) that comprise USRAP often coordinate poorly with one another, and U.S. policymakers have not come to terms with the tension between USRAP’s goals

²⁴⁵ *Border Security, Economic Opportunity, and Immigration Modernization Act (S.744) 2013, § 3411(a)*

²⁴⁶ “Senators Introduce the Refugee Protection Act of 2010,” March 2010, American Immigration Council, <http://immigrationimpact.com/2010/03/16/senators-introduce-the-refugee-protection-act-of-2010/>.

*of protecting the most vulnerable and of refugee integration. The diverse needs of new refugee populations have underscored limitations in the standard approaches to resettlement.”*²⁴⁷

Both the American Immigration Council and the Migration Policy Institute have pointed to the lack of protections refugees have received, the inconsistent treatment of refugee groups, and the inefficient process of adjudicating on refugee applications. The Senate took the first step in creating provisions aimed at enhanced efficiency and fairness; however, the Center for Immigration Studies, argues for reform to current policy from a different angle and disagrees with S.744’s approach. According to the conservative think tank, “Policy about who is admitted as a refugee to the United States has been surrendered to the U.N. and non-governmental organizations (NGOs) that stand to benefit from the program. In recent years, up to 95 percent of the refugees coming to the United States were referred by the U.N. High Commissioner for Refugees (UNHCR) or were putative relatives of U.N.-selected refugees.”²⁴⁸ In addition to its criticisms of the United States losing control of its refugee admittance policy, the Center for Immigration Studies cites insufficient background checks that have allowed dangerous criminals and terrorists to enter the United States and an inflated number for accepted refugees as glaring issues in current policy. S.744 would increase the number of refugees with the new provision that allows the spouse and children of a refugee to also enter; yet, many policy institutes, such as the Center for Immigration Studies, stand for lower immigration numbers. While all three think

²⁴⁷ Donald M. Kerwin, *The Faltering U.S. Refugee Protection System: Legal and Policy Responses to Refugees, Asylum Seekers, and Others in Need of Protection*, (Washington, D.C.: Migration Policy Institute, 2011), p.1.

²⁴⁸ Don Barnett, “Refugee Resettlement: A System Badly in Need of Review,” May 2011, Center for Immigration Studies, <http://www.cis.org/refugee-system-needs-review>.

tanks are in favor of reform, the method of approaching the number of admitted refugees and the way they are screened are very different.

III. House-Proposed Changes to S.744 in H.R.15

While S.744 was an important accomplishment to get immigration reform moving forward, H.R.15 begins the process of compromise. Democrats in the House of Representatives proposed H.R.15 on October 2, 2013, basing it on S.744. The largest change between S.744 and H.R.15 is the removal of the Corker-Hoeven border security amendment, replacing it with the bipartisan border security bill — H.R.1417 — which was unanimously passed by the Homeland Security Committee. The removal of the Corker-Hoeven amendment stems from Democrat and Republican concern that it does not adequately approach border security issues. While more conservative Republicans want a border security plan with “more teeth,” House Democrats argue that a better metric to track progress and provide detailed reports is more important than simply increasing spending. This argument has been rejected by Senate members who voted for S.744. The bipartisan voting bloc argues that the Corker-Hoeven amendment allots incredible resources to border and interior enforcement through effective means. In H.R.15, the approach to border enforcement is significantly different. The metric-based system implements far more oversight; and according to House Democrats who proposed the bill, it is clearer with fewer loopholes and less subjective bureaucratic implementation.

A. The McCaul Bill (H.R.1417)

The removal of the Corker-Hoeven amendment was the main focus of the House Democrats when proposing H.R.15. According to the Democrats, the Corker-Hoeven amendment allotted resources to border security in a militaristic fashion. In place of the Senate-passed amendment, H.R.15 incorporates H.R.1417 — the McCaul bill. H.R.1417 attempts to tackle border security in a more measured manner. This includes the requirement for more extensive reports to the Government Accountability Office (GAO) and advanced metrics to measure the progress and accountability of all programs associated with border security. House Democrats argue that the McCaul bill does not simply throw money at border enforcement to fix illegal immigration problems like the Corker-Hoeven amendment; yet, it uses effective number-crunching and increased reporting to prove what resources are needed. The McCaul bill includes the following: First, frequent and scheduled reports will be done by the Department of Homeland Security (and all of its sub-departments such as Immigration and Customs Enforcement and Customs and Border Protection) on current surveillance of the borders as well as efforts to prevent illegal immigration, importation of drugs, terrorist threats, and human rights violations. Second, a strategy to achieve situational awareness and control of the Southwestern border within five years after the bill's passage would be created. This strategy must produce a report that includes threat assessments and proven metrics on effectiveness. Third, a plan to create and install a biometric entry and exit system at all ports of entry would be done immediately. If it is concluded that the biometric system is not economically or systematically feasible, a substitute plan would be required to be created in order to provide an equal level of security.

The McCaul Bill removes key provisions from the Corker-Hoeven amendment, which was included in S.744 to gain Republican support. The Corker-Hoeven provisions cut out

include: First, a requirement to spend over \$30 billion on border security. The McCaul bill uses more flexibility through statistical analysis to determine the amount and means necessary to secure the border. Second, H.R.15 removes the specification to increase the number of Border Patrol agents to at least 38,405, or more than 19,200 more than currently employed. Third, the House bill discards the mandatory minimum technology requirements at all border stations — towers, mobile surveillance systems, hand-held devices, ground sensors, fiber-optic tank inspection scopes, camera systems, contraband detectors, mobile targeting system, unmanned aircraft, and radar systems.²⁴⁹ Fourth, H.R.15 eliminates the Southern Border Fencing Strategy and Comprehensive Southern Border Security Strategy. In place of these two initiatives is the metrics and reporting requirements set forth in the H.R.1417. The McCaul bill gives the duty to the Department of Homeland Security (DHS) to determine what fencing and technology are needed at the border. However, H.R.15 includes these provisions from S.744 as a backup plan to be used if DHS believes it is a more effective strategy.

The McCaul bill is far more extensive in its use of metrics and requirements on reporting. For example, reports to the Government Accountability Office and the necessary congressional committees must be submitted 90 days after the bill is enacted. The bill requires these detailed reports on “situational awareness” and “operational control” to be submitted frequently. “Such reports shall include an identification of the high traffic areas and the illegal border crossing effectiveness rate for each sector along the northern and southern borders of the United States that are within the responsibility of the Border Patrol.”²⁵⁰ “Situational awareness” is defined in

²⁴⁹ *A Guide to H.R. 15: Understanding the 2013 Senate Immigration Bill*, (Washington, D.C.: American Immigration Council, 2013), p.2.

²⁵⁰ *Border Security, Economic Opportunity, and Immigration Modernization Act* (H.R.15) 2013, § 3(a)

H.R.15 as gaining “knowledge and an understanding of current illicit cross-border activity, including cross-border threats and trends concerning illicit trafficking and unlawful crossings along the international borders of the United States and in the maritime environment, and the ability to forecast future shifts in such threats and trends.”²⁵¹ “Operational Control” means “a condition in which there is a not lower than 90 percent illegal border crossing effectiveness rate, informed by situational awareness, and a significant reduction in the movement of illicit drugs and other contraband through such areas is being achieved.”²⁵² The bill also dictates within 120 days after the bill is enacted, DHS is required to enforce a metric system that will measure effectiveness of border enforcement at ports of entry. The metrics will include statistical analysis of illegal border crossing rates, the rate of drug raids, and habitual illegal reentries. Two years after the metric system plan is put in place, DHS must have achieved “situational awareness” and “operational control” in high-traffic areas. Five years after the strategy is enacted, DHS must be able to provide evidence that both have been achieved for the entire Southwest border. Following that certification, annual reports must be filed to prove both “situational awareness” and “operational control” continue to be maintained.

H.R.15 includes a provision to create the Southern Border Security Commission if “situational awareness” and “operational control” are not achieved and maintained within five years. In order to ensure security goals are met, the commission will be composed of members appointed by the President, Senate, House, and Southern border states. The commission will aid DHS in accomplishing goals set forth in H.R.15. The bill also creates the Border Security

²⁵¹ Ibid., § 4(a)(10)

²⁵² Ibid., § 4(a)(9)

Results Strategy, which requires a plan of action to be submitted by DHS 180 days after the bill's enactment. The strategy must include ways to maintain "situational awareness" and "operational control" in high-traffic areas within two years, and five years for the entire southwest border.

Additionally, threats, technology integration, DHS cooperation, and necessary employment must be assessed and reported. These requests and the analysis will be reviewed by the Government Accountability Office.

The Border Security Results Strategy must implement the Comprehensive Southern Border Strategy and the Southern Border Fencing Strategy before applicants for the Registered Provisional Immigrant Status (RPI) are permitted to enter the United States. The Comprehensive Southern Border Strategy will attempt to realize an effectiveness rate of 90 percent in deterrence at all border sectors. DHS will also include the Southern Border Fencing Strategy, which aims to decide where to place additional fencing, double-fencing, advanced technology, and improved infrastructure. The bill also restricts RPIs from adjusting to Lawful Permanent Resident (LPR) status until the following are accomplished: the Comprehensive Southern Border Strategy is operational, the Southern Border Fencing Strategy is at a minimum near completion, the E-Verify employment authorization and verification program is mandatory for all employers in the United States, and an electronic exit system at air and sea ports is active.

Although H.R.15 uses the McCaul bill to replace the Corker-Hoeven amendment from S. 744, the act would still make substantial investments in border security. The bill outlines billions of dollars for the advancement and security of border and interior immigration enforcement. These investments include: \$3 billion for the Border Security Results Strategy; \$2 billion allotted for necessary actions as prescribed by the Southern Border Security Commission; \$1.5 billion for

the construction of fencing and infrastructure, and the addition of personnel and technology; an undisclosed amount on 24-hour surveillance of the Southwest border region using video, unmanned aircraft, helicopters, and watercraft; and \$750 million for the E-Verify program and its implementation. Additional funds will be given to DHS to hire and train 3,500 Customs and Border Protection agents. Similarly, H.R.15 provides capital for the increased prosecution of border crossing violations and the improvements to state law-enforcement that will aid federal law-enforcement in fighting illegal immigration and drug smuggling.

In order to ensure the achievement of the provisions in H.R.15, the bill creates the Border Oversight Task Force. The Task Force will be under DHS and will have 33 members appointed by the President, including 19 members from the southern border region and 14 members from the northern border region. The goal of the Task Force is to recommend policies for border enforcement, training of personnel, and to assess the impact of such policies on border communities and the protection of due-process rights and civil rights. The Task Force will be required to submit reports on these matters, as well as address humanitarian and physical safety concerns for immigrants.

B. The Six Floor Amendments

In addition to removing the Corker-Hoeven amendment, the House added six floor amendments, which include: the Landrieu Amendment, the Tester amendment, the Manchin amendment, the Pryor amendment, the Hellner amendment, and the Merkley amendment. The Landrieu amendment — Section 4607(c)(1) — repeals the pre-adoption parental visitation requirement for automatic citizenship and amends Section 320 of the *Immigration and*

Nationality Act to read: “The child is physically present in the United States in the legal custody of the citizen parent pursuant to a lawful admission.”²⁵³ Therefore, children born abroad who have a U.S. citizen for a parent do not receive automatic citizenship as previously allowed. The Tester amendment — Section 113(a)(3)(A)(i)(III) — includes two tribal government officials onto the Border Oversight Task Force. The Manchin amendment — Section 1122 — puts a “limit on the costs of compensation of all executives and employees of contractors ... [to be] the annual amount payable under the aggregate limitation on pay as established by the Office of Management and Budget (currently \$230,700).”²⁵⁴ The Pryor amendment — Section 1102(e)(1) — calls upon “the Secretary [of Homeland Security], in conjunction with the Secretary of Defense, [to] establish a program to actively recruit members of the reserve components of the Armed Forces and former members of the Armed Forces, including the reserve components, to serve in United States Customs and Border Protection and United States Immigration and Customs Enforcement.”²⁵⁵ The Heller amendment — Section 5(b)(1)(D) — removes the representative from Nevada on the Southern Border Security Commission and leaves only California, New Mexico, Arizona, and Texas with representatives. The Merkley amendment — Section 4607(d) — states: “The Secretary of Labor may not grant a temporary labor certification to a prospective H–2B employer seeking to employ H–2B nonimmigrants in forestry until after the Director of the State workforce agency” has completed all the active recruiting of Americans set forth in Section 4607(c) and “makes a formal determination that nationals of the United States are not qualified or available to fill the employment opportunities offered by the

²⁵³ Ibid., § 4607(c)(1)

²⁵⁴ Ibid., § 113(a)(3)(A)(i)(III)

²⁵⁵ Ibid., § 1102(e)(1)

prospective H-2B employer.”²⁵⁶ Each of the floor amendments was aimed at helping H.R.15’s overall goal of limiting bureaucratic subjective decision-making and ensuring the absolute preference shown to American workers before immigrants.

IV. Congressional Budget Office Cost-Benefit Analysis of S.744

The Congressional Budget Office (CBO) released two reports on June 18, 2013 entitled “The Economic Impact of S. 744, the *Border Security, Economic Opportunity, and Immigration Modernization Act*” and “S. 744: *Border Security, Economic Opportunity, and Immigration Modernization Act*” to give its assessment of the fiscal and economic effects of the bill. The CBO is an objective government body that seeks to present the best statistical analysis; and therefore, the numbers presented in the reports should be used as the base, rather than ones done by a private research institute — such as Center for American Progress or Heritage. The reports detail overwhelmingly positive findings. According to the CBO, if the bill was enacted, it would “reduce the federal budget deficit by approximately \$1 trillion over 20 years, would boost the U.S. economy as a whole without negatively affecting U.S. workers, and would greatly reduce future undocumented immigration.”²⁵⁷ “S. 744: *Border Security, Economic Opportunity, and Immigration Modernization Act*” reports on the fiscal impact of the bill over the next 20 years while “The Economic Impact of S. 744, the *Border Security, Economic Opportunity, and Immigration Modernization Act*” details the effects S.744 would have on the U.S. economy. A

²⁵⁶ Ibid., § 4607 (d)

²⁵⁷ *A Guide to H.R. 15: Understanding the 2013 Senate Immigration Bill*, (Washington, D.C.: American Immigration Council, 2013), p.11.

third report was released on July 3 after the Senate passed S.744 with the Corker-Hoeven amendment added in the act.

S.744 would implement provisions that would allow millions of undocumented immigrants to earn legal status while creating better efficiency in the legal immigration system. Similarly, border enforcement and interior enforcement would be granted substantial amounts of money from the act. The reports released by the CBO attempt to break down each component of the bill and how they will affect government finances as well as the U.S. economy. Since the bill would result in additional public expenses along with new government revenue, the CBO has an important job in creating a cost-benefit analysis that could shape amendments, program structure, and support and opposition to the bill.

A. Budget Deficit Savings

The CBO concluded that 10 years after the enactment (2023) of S.744, the federal budget would have a net savings of about \$135 billion. According to the CBO, the implementation of S. 744 would cost the federal government \$23 billion; and therefore, the federal budget's deficit would decrease a net \$158 billion. The big savings would come over the 2024-2033 period. The second ten-year period after the bill's enactment would result in at least \$905 billion in net savings for the federal budget. The CBO estimate \$905 billion by using several factors. Two reports detail how the CBO came to the conclusion. The report on July 3 details the costs of implementing the legislation from 2024-2033 — “projected to total between \$75 billion and \$80 billion” — and the estimated decline in the federal budget deficit — “\$685 billion (or 0.2 percent

of gross domestic product).”²⁵⁸ Therefore, a net savings of between \$605 billion and \$610 billion will be accrued. In the report, “The Economic Impact of S. 744, the *Border Security, Economic Opportunity, and Immigration Modernization Act*,” the CBO approximates that \$300 billion will be saved according to its “central estimates (within a range that reflects the uncertainty about two key economic relationships in CBO’s analysis).”²⁵⁹ These net fiscal gains would be caused by an increase in number of legalized undocumented aliens, and therefore a surge in income and payroll taxes.

B. The Effects on the Economy

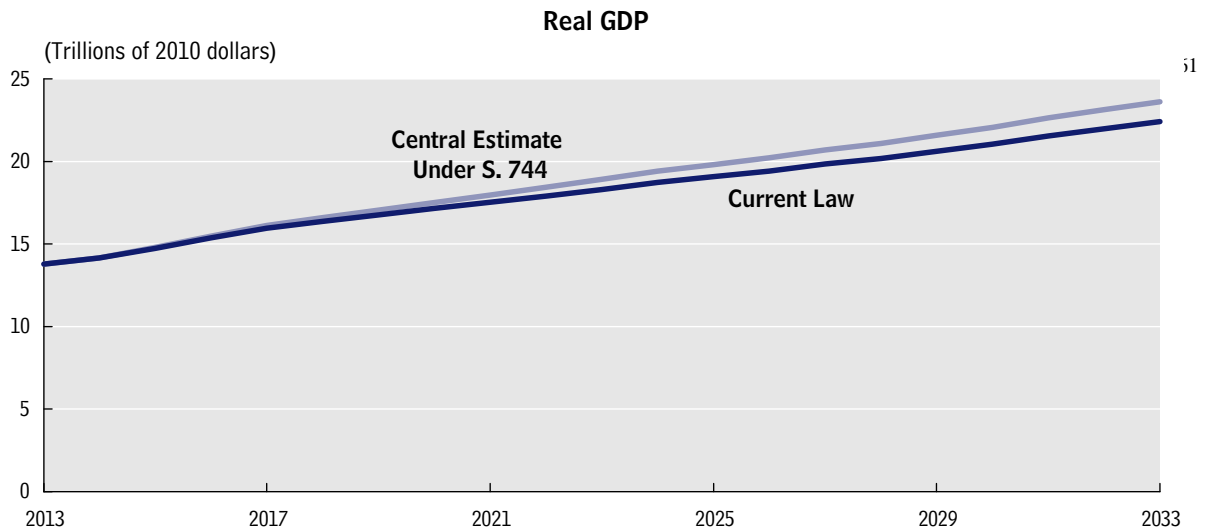
The CBO estimates S.744 would increase the real Gross Domestic Product (GDP) of the United States by 3.3 percent in 2023 and 5.4 percent in 2033.²⁶⁰ The following figure illustrates how S.744 would positively affect real GDP more than current immigration law.

²⁵⁸ Douglas W. Elmendorf to Patrick J. Leahy, June 24, 2013, in Congressional Budget Office website, <http://www.cbo.gov>, p.6.

²⁵⁹ Douglas W. Elmendorf, *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act*, (Washington, D.C.: Congressional Budget Office, 2013), p.2.

²⁶⁰ *Ibid.*, p. 3.

Estimated Effects of S. 744 on Real GDP

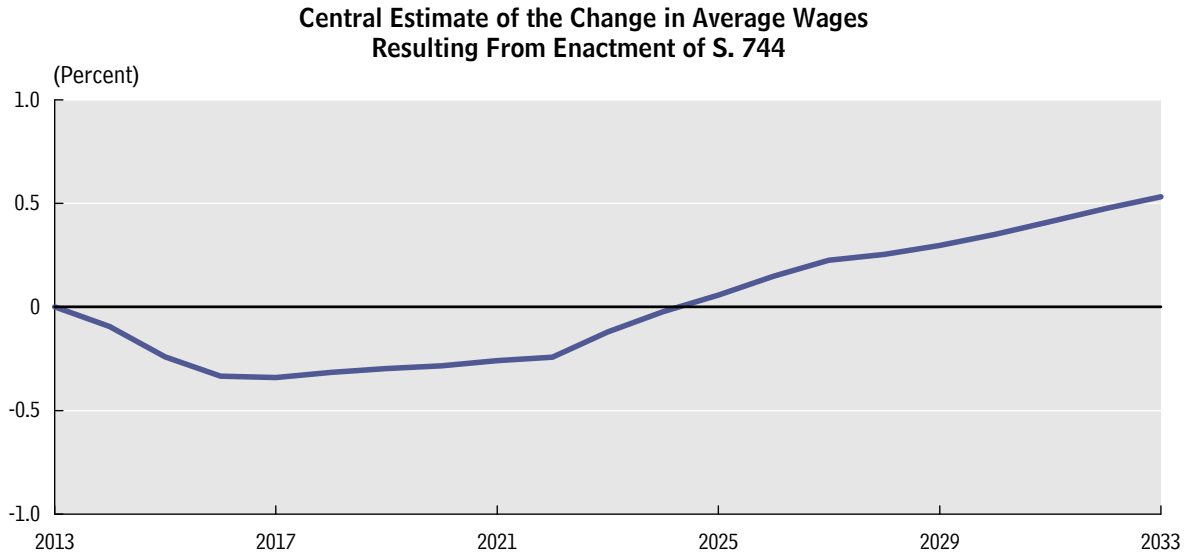


In addition to the positive effects S.744 would have on real GDP, the bill would create an increase in average wages by 2025. The boost would not happen overnight. According to the CBO, “average wages for the entire labor force would be 0.1 percent lower in 2023 and 0.5 percent higher in 2033 under the legislation than under the current law.”²⁶² The 0.1 percent drop is an extremely small loss in average wages, and would produce a better percentage over a twenty-year period than current law. The CBO asserts that the small reduction would be caused by an inflow of new immigrant workers into the labor force who “would be less skilled and have lower wages, on average, than the labor force under current law.”²⁶³

²⁶¹ Ibid., p.17.

²⁶² Ibid., p.3.

²⁶³ Ibid., p.3.



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Similarly, the unemployment rate would see a slight increase until 2020 by 0.1 percent. The small initial increase is a result of “the economy adjust[ing] to the increased inflow of immigrants.”²⁶⁵

C. Deterring Illegal Immigration

The CBO demonstrates confidence, to an extent, in S.744’s ability to deter illegal immigration. According to the report released on July 3, 2013, the CBO estimates that the net annual inflow of undocumented aliens “would be reduced by between one-third and one-half compared with the projected net inflow under current law. That effect would not be immediate, as it would take several years before DHS could hire the full number of Border Patrol agents called for in the act.”²⁶⁶ While the CBO’s claim is positive, it does not provide the reader with a

²⁶⁴ Ibid., p.18.

²⁶⁵ Ibid., p.9.

²⁶⁶ Douglas W. Elmendorf to Patrick J. Leahy, June 24, 2013, in Congressional Budget Office website, <http://www.cbo.gov>, p.5.

formula or explanation of how the numbers were reached. However, the CBO clearly looked at how S.744 would deter illegal immigration through enforcement measures and E-Verify's impact in reducing illegal employment in the United States. Therefore, by only looking at these two provisions, the American Immigration Council asserts that the CBO "fails to account for the incentives built into future-flow programs to encourage people to migrate legally and to depart on time. Taking these incentives into account, illegal immigration should decline significantly as new worker programs become fully implemented."²⁶⁷

There are four provisions in S.744 that would help stem the tide of unauthorized immigration in conjunction with border enforcement and E-Verify. With these additional provisions, S.744 would hypothetically do more to prevent illegal immigration than the CBO estimate. The provisions are: First, the improved process for lower-skilled workers which enables them to immigrate into the United States with the new W-visa. The W-visa only allows for these workers to enter while the economy is growing because the authors of the bill used "past trends [which] show[ed] illegal immigration increases when the economy is expanding."²⁶⁸ Second, additional channels for workers on nonimmigrant visas can apply for a green card through the merit-based point system (Tier 2). This new system makes it less likely that they would overstay their visa. The Tier 2 track system also allocates "between 60,000 and 125,000 visas each fiscal year for immigrants in high-demand less-skilled occupations."²⁶⁹ Third, S.744 increases the number of employment-based visas for less-skilled workers and improves

²⁶⁷ *A Guide to H.R. 15: Understanding the 2013 Senate Immigration Bill*, (Washington, D.C.: American Immigration Council, 2013), p.11.

²⁶⁸ *Ibid.*, p.12.

²⁶⁹ *Ibid.*, p.12.

protections for U.S. workers. These changes would promote fair but necessary immigration. Fourth, there would be an acceleration of accepting spouses and minor children of LPRs. This would help prevent illegal inflows in family-based immigration. If these relatives gain visa status quicker, they would have less incentive to risk entering and staying illegally.

V. STEM Reform in H.R.459 and S.303

The fields of science, technology, engineering, and mathematics (STEM) are essential to the future success of the United States. The complexity of creating immigration law that regulates these fields makes it difficult to put it in a comprehensive bill such as S.744. Therefore, Congress has separated STEM regulation in two recent bill proposals: S.303 and H.R. 459. These bills focus on how to make it easier for those who hold degrees in these fields to fill holes in the U.S. workforce and make significant contributions to the U.S. economy. However, neither bill has been voted on. STEM reform has taken a backseat to comprehensive immigration reform currently capturing the spotlight. Nonetheless, STEM reform is necessary and requires the full attention of Congress.

A. H.R.459

The *STEM Visa Act of 2013 (H.R.459)* was introduced to the House of Representatives on February 4, 2013. The bill would amend the *Immigration and Nationality Act of 1965* by allotting 55,000 visas beginning in fiscal year (FY) 2015 for immigrants qualified with:

*“(1) a doctorate degree in a field of science, technology, engineering, or mathematics [STEM degree] from a United States doctoral institution of higher education; and (2) have taken all doctoral courses in a field of science, technology, engineering, or mathematics, including all courses taken by correspondence ... or by distance education, while physically present in the United States.”*²⁷⁰

H.R.459 defines the term “a United States doctoral institution of higher education” as an institution that:

*“(1) is defined under the Higher Education Act of 1965 ... or is a proprietary institution of higher education; (2) was classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2012, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation ... as having research activity equivalent to such institutions; and (3) is accredited by an accrediting body that is itself accredited either by the Department of Education or the Council for Higher Education Accreditation.”*²⁷¹

The bill creates a plan to reallocate unfilled visas to be available to applicants who:

“(1) hold a master's degree in a field of science, technology, engineering, or mathematics from a United States doctoral institution of higher education that was either part of a master's program that required at least two years of enrollment or part of a five-year combined baccalaureate-master's degree program in such field; and (2) have taken all master's degree courses in a field

²⁷⁰ STEM Visa Act of 2013 (H.R.459) (2013), § 2(c)(2)(A)

²⁷¹ Ibid., § 2(c)(2)(B)(iii)

*of science, technology, engineering, or mathematics, including all courses taken by correspondence ... or by distance education, while physically present in the United States.”*²⁷²

H.R.459 is designed to be faster than current STEM regulation for applicants. An important criticism of the current system is immigrants with needed skills are waiting extensive amounts of time. Therefore, the authors of the bill inserted a requirement for the Department of Homeland Security (DHS) to decide on a petition made by a STEM applicant within 60 days of filing.²⁷³ Similarly, DHS must notify a petitioner within 30 days if they are not approved.²⁷⁴ Additionally, the Department of Labor’s (DOL) role would be more efficient. DOL would be required to decide on a STEM application within 180 days of the file date and 60 days if the application does not meet approval standards. Most importantly, H.R.459 would eliminate the Diversity Immigrant Program (DIP). DIP had long been seen as an unnecessary way to force diversity. The 55,000 LPR visas would instead be granted to the advancement of science, technology, engineering, and mathematics in immigration.

The bill would also revise foreign student visas (the F-visa) to create four sub-categories. The F-1 visa would be for “a foreign student who is pursuing a full course of STEM field study at a U.S. institution of higher education or a proprietary institution of higher education which has agreed to report the attendance termination of each nonimmigrant student to DHS, or who is participating in related temporary optional practical training following completion of such

²⁷² Ibid., § 2 (c)(7)(A)

²⁷³ Library of Congress, “H.R.459 - STEM Visa Act of 2013,” 2013, United States Legislative Information, <http://beta.congress.gov>.

²⁷⁴ Ibid., p.1.

studies.”²⁷⁵ The F-2 visa is for a foreign student “who has an actual residence in a foreign country and who seeks to enter the United States temporarily and solely to pursue a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or in a language training program in the United States, which has agreed to report the attendance termination of each nonimmigrant student to DHS.”²⁷⁶ The F-3 visa is for “the spouse or minor child of an F-1 or F-2 foreign student.”²⁷⁷ Lastly, the F-4 visa is for “a Canadian or Mexican foreign student who maintains an actual residence in such country and commutes to a U.S. institution for full or part-time (F-1 or F-2 related) study.”²⁷⁸ The variety in student visas allow for more flexibility for the United States to recruit the best and brightest; and works in conjunction with other provisions to create policy that urges STEM degree recipients to stay in the United States for the foreseeable future.

B. S.303

S.303 is slightly different from H.R.459. The bill keeps the main provisions intact, only adding one category and four minor provisions. In defining eligibility for STEM visa, S.303 adds a third level. The bill allows for those “who hold a baccalaureate degree in a STEM field or in a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary group of biological and biomedical sciences” to be granted a

²⁷⁵ Ibid., p.1.

²⁷⁶ Ibid., p.1.

²⁷⁷ Ibid., p.1.

²⁷⁸ Ibid., p.1.

STEM visa, unlike H.R.459.²⁷⁹ There are four provisions added: First, DHS would be required to post specified information regarding STEM employers on their website which details the number of aliens granted STEM visas and their occupations. Second, the National Science Foundation would be obligated to report to Congress every five years on the status and progress of the STEM workforce in the United States. Third, the spouse and minor children (V-visa) of a LPR would be permitted to “wait in the United States (without work authorization) for the availability of an immigrant visa.”²⁸⁰ Lastly, S.303 requires a reduction in federal discretionary spending in order to offset expenses carried out by the bill. S.303 uses the base of H.R.459, but pursues expanded options, better oversight, and more efficiency in the STEM immigration programs.

VI. Refugee Policy Reform

The United States has maintained an active role in the protection of refugees seeking asylum due to persecution. However, according to several experts such as Senator Patrick Leahy, the United States refugee policy is in need of serious reform. While *BSEOIM* contains provisions to tackle issues in the refugee policy, it does not go to the lengths the *Refugee Protection Act* or the *Domestic Refugee Resettlement Reform and Modernization Act* do. These two bills have received little support, perhaps due to other important issues such as the economy or healthcare. Republicans and Tea Partiers are against an increase in refugee admittance,

²⁷⁹ Library of Congress, “S.303 - STEM Visa Act of 2013,” 2013, United States Legislative Information, <http://beta.congress.gov>.

²⁸⁰ *Ibid.*, p.1.

arguing the fact that “the United States will admit nearly three times the number of refugees as the rest of the developed world combined” is evidence refugee policy needs reform.²⁸¹

Democrats emphasize the importance in protecting new refugee groups, such as Syrians, and call for reform that increases efficiency and flexibility based on dynamic global changes.

President Obama granted an exemption in February to the United States’ antiterrorism laws to help Syrians who aided the rebel cause and have no affiliation with terrorist groups. Republican leaders were unconvinced these exemptions were not given to Syrians who had aided terrorists, contending the President had abused his power and compromised the integrity of United States immigration law. John Cornyn (R-TX), the top Republican on the Senate Judiciary Subcommittee on Immigration, argued:

*“We are a nation of laws, and the executive branch should not be allowed to unilaterally suspend our immigration laws to provide benefits to those who have supported terrorists.”*²⁸²

The exemption continues a series of decisions made by the Obama Administration that has left many Republicans to “not trust [President] Obama to carry out enforcement measures they would enact.”²⁸³ This distrust has also affected the overall discussion of immigration reform, which Republicans argue is their main reason to wait until after the 2014 midterm elections to begin a dialogue on reform. However, whenever immigration reform becomes the priority of

²⁸¹ Don Barnett, “Refugee Resettlement: A System Badly in Need of Review,” May 2011, Center for Immigration Studies, <http://www.cis.org/refugee-system-needs-review>.

²⁸² Julia Preston, “Republicans Criticize Rules to Aid Syrians Seeking Asylum,” February 2014, The New York Times, http://www.nytimes.com/2014/02/08/us/rules-to-aid-asylum-seeking-refugees-are-called-security-threat.html?_r=0.

²⁸³ Ibid., p.1.

Congress, it must decide if the refugee policy will be a separate compromise, or part of a comprehensive strategy.

A. The Refugee Protection Act of 2010

The *Refugee Protection Act (S.3113)*, was introduced to the Senate on March 15, 2010. The bill attempts to improve protections for refugees who seek asylum in the United States who have genuine claims. The concern of Senator Patrick Leahy (D-VT), the bill's sponsor, was that current law requires unnecessary hurdles to jump through that can put refugees with legitimate claims in harmful situations. Senator Leahy is the Chairman of the Senate Judiciary Committee, which monitors immigration and refugee related issues. He urged support for the bill and said:

*“It is time to renew America’s commitment to the Refugee Convention, and to bring our law back into compliance with the Convention’s promise of protection. The Refugee Protection Act of 2010 contains provisions of a bipartisan bill that ... [would] repeal the most harsh and unnecessary elements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a law that had tragic consequences for asylum seekers. It also corrects agency and court misinterpretations of law that limit access to safety in the United States for asylum seekers. Finally, it modifies the immigration statute to ensure that innocent persons with valid claims are not unfairly barred from the United States by laws enacted after September 11, 2001, while leaving in place provisions that prevent dangerous terrorists from manipulating our immigration system.”*²⁸⁴

²⁸⁴ David Carle, “Leahy Introduces Landmark Refugee Protection Act,” March 2010, The United States Senate, <http://www.leahy.senate.gov>.

The bill would attempt to fix protections for asylum seekers where Senator Leahy and other Democratic sponsors believe the refugee program is broken. Senator Leahy stressed that the United States must be at the forefront in its commitment to protecting refugees with legitimate claims. The bill would eliminate the requirement for a refugee to file a claim within one year of arrival. This is due to certain refugees believing that they could be in danger if they do it within one year. Additionally, the bill would eliminate the one year required waiting period for refugees to apply for a green card. S.3113 also attempts to protect the children and family members of refugees who might be in danger. These “derivative applicants” would go through the same security checks. S.3113 allows the Secretary of State to review global situations and determine if there is a specific group that is eligible for expedited adjudication. The bill also includes economic protections. The “per capita refugee resettlement grant level” would be adjusted each year to ensure that newly resettled refugees do not “slip into poverty.”²⁸⁵

The bill failed to be voted on and was sent to the Senate Judiciary Committee. The same bill was re-introduced by Senator Patrick Leahy in 2011 as S.1202 and in 2013 as S.645. Each time the bill was referred to the committee. The 113th Congress has proposed three bills that are very similar to each other; however, none of the bills have gathered enough support.

B. Refugee Reform Bills Proposed in the 113th Congress

The 113th Congress has had three refugee reform bills — all known as the *Domestic Refugee Resettlement Reform and Modernization Act of 2013* — proposed: S.883, H.R.1784, and S.1850. S.883, the first, was proposed on May 5, 2013. The bill would require the Comptroller

²⁸⁵ Ibid., p.1.

General to conduct a study on the current effectiveness of the Office of Refugee Resettlement refugee programs. The *Immigration and Nationality Act of 1965* would be amended to establish “as head of the Office [of Refugee Resettlement] an Assistant Secretary of Health and Human Services [HHS] for Refugee and Asylee Resettlement.”²⁸⁶ The Assistant Secretary would be in charge of: (1) reporting to Congress which states experience departures and arrivals due to secondary migration; and (2) expanding “the Office’s data analysis, collection, and sharing activities to include data on mental and physical medical cases, housing needs, and refugee employment.”²⁸⁷ Lastly, the bill would instruct the Secretary of State and the Secretary of HHS to supply “refugee resettlement guidance to appropriate national, state, and local entities.”²⁸⁸ Clearly, S.883 is significantly different than Senator Leahy’s proposed bill from the previous section. S.883, along with H.R.1784 and S.1850, attempt to find the genesis of the issues in the refugee and resettlement programs rather than patch what is believed to be a problem.

H.R.1784 was proposed on June 14, 2013, and only adds a provision that calls for the revision of the refugee grant and contract assistance allocation formula.²⁸⁹ Senator Debbie Stabenow (D-MI) proposed S.1850 on December 18, 2013 as its sponsor. The bill combined previous provisions and omitted others. However, the same basic framework was kept. Each attempt at reforming the refugee program has been halted. Perhaps Congress is waiting for comprehensive immigration reform to pass before acting on a thorough reform to refugee policy.

²⁸⁶ Library of Congress, “S.883 - Domestic Refugee Resettlement Reform and Modernization Act of 2013,” 2013, United States Legislative Information, <http://beta.congress.gov>.

²⁸⁷ Ibid., p.1.

²⁸⁸ Ibid., p.1.

²⁸⁹ Library of Congress, “H.R.1784 - Domestic Refugee Resettlement Reform and Modernization Act of 2013,” 2013, United States Legislative Information, <http://beta.congress.gov>.

Although S.744 contains provisions to protect refugees, bills such as S.3113 are more in-depth and must be considered to fully solve issues facing refugees.

VII. The Road Ahead

This chapter has laid out the current reform efforts, the support and opposition for such efforts, and the potential moves of important political actors moving forward. Comprehensive reform in the House of Representatives is doubtful. House Republicans refuse to overhaul the immigration system all at once, and instead aim to take a bill-by-bill approach. House Democrats are against a robust enforcement strategy without a strict metric that analyzes achievement and for a path to citizenship. Both sides are far apart; and with conservative Republicans in the House stating there will be no reform in 2014, this issue may take a back seat for political motivations.

Despite the political rhetoric and misguided methodology used in several areas, the next chapter of the thesis will provide an objective approach to immigration reform. A reform proposal will be given, detailing how each major section of immigration should be handled. Should STEM and refugee reform be separate? How should Congress allocate money to border security? There will be a heavy reliance on the Congressional Research Service, the Congressional Budget Office, and other key objective actors in order to produce the most fact-based proposal possible. Therefore, the next chapter will be an objective conclusion to the history, contemporary issues, and possible reforms of the United States immigration system.

CHAPTER V: The Impossible Compromise

Why Immigration Reform Won't Happen As It Should

I. Blocking Reform

In the last chapter on reform, I described the strained discussions in Congress involving immigration reform. Overarching ideological alignments of the Democratic and Republican parties have prevented action in the House of Representatives. A more moderate Senate was able to compromise on amnesty and border enforcement, the two glaring issues that cause such tension in the House. With the announcement by conservative Republicans in the House that immigration reform would not come in 2014, once again the issue has been put on the back burner. The political implications of the 2014 midterm elections have taken over, halting the progress made on reform. Republicans want to regain the Senate, and misstepping on immigration reform could cost them seats in November. Despite the Republican party announcing its principles on a bill-by-bill approach to immigration reform on January 30, 2014, the party stands divided on undertaking reform discussions in 2014; and therefore, significant issues for the economy and workforce will be left without action. The Center for American Progress (CAP), a liberal think tank, estimates, using a Congressional Budget Office cost-benefit report on S.744, the United States misses out on \$37 million dollars per day in revenue without the enactment of S.744.²⁹⁰ It has now been nearly nine months since the Senate passed their version of immigration reform, yet Congress has stayed in a stalemate unlike any other in recent

²⁹⁰ Crystal Patterson, "RELEASE: \$37 Million in Revenue Lost Each Day Without Immigration Reform," Center for American Progress, November 7, 2013, <http://www.americanprogress.org/>.

history. Congress has lost the faith of the American people, and many are calling it the Congress of “inaction.”

Clearly, the United States needs immigration reform. STEM immigrants who could fill serious holes in our workforce are blocked from entry; and those that receive STEM degrees from U.S. institutions tend to leave once they finish. Low-skilled immigrants help fill thousands of jobs in agriculture while risking inhumane working conditions and less-than minimum wage pay. Millions of undocumented immigrants live in the United States without paying full taxes, a benefit the United States needs with more than \$17 trillion in national debt. Senate leaders realized this, and garnered support that put aside political agendas for a bill that they believe solves major gaps in current policy. The current system is inefficient and insufficient, and flaws are burdening the economy and workforce. The future of the United States economy relies on several factors, such as education and healthcare; however, the immigration system is in charge of controlling the incredibly high number of illegals that don't pay full taxes and the future workforce in STEM areas. The cultural and economic impact of inaction with the U.S. immigration system cannot be left to the whims of political implications and midterm elections.

The Senate took the first step, but what would it take to pass a bill? Right now, Democrats and Republicans are impossibly apart on several issues. To make matters more complicated, Tea Party Republicans, the libertarian members of the party, and the more moderate Republicans disagree on amnesty and border security. The Senate was able to compromise on immigration reform, something that Senator Ted Cruz (R-TX) is urging House Tea Partiers to prevent in its current form. Senator Cruz, an influential Tea Party leader, has argued the Tea Party's stance against any legislation that allows undocumented immigrants to receive legal

status if they meet specific requirements. Senator Cruz stated to Bloomberg News on January 31, 2014, one day after House Republicans released their principles on immigration:

*“I think it would be a mistake if House Republicans were to support amnesty for those here illegally.”*²⁹¹

Senator Jeff Sessions (R-AL), agreed with Senator Cruz, stating:

*“Once again, we have the same recycled talking points — crafted, it would appear, with the help of the same consultants and special interests ... Each time, the talking points are followed by legislation that fails to match the promises — legislation that, at bottom, ensures only the amnesty and not the enforcement.”*²⁹²

Both Senators echo the sentiments of Tea Partiers — the majority of whom are in the House — that immigration reform by the Senate was “written behind closed doors in confusing legalese and code, released with little time to review and analyze the bill, with so much complexity that regular Americans have no chance of understanding all of the implications and ramifications.

Congress also uses these enormous bills to hide unpopular provisions and crony, corruptive deals because they know they will pass it before we can see what’s in it. Real reform would be broken into pieces that are manageable and understandable to the American people – no more comprehensive bills.”²⁹³ These Tea Partiers have stated that they will reject an proposals that provide a break to immigrants who entered the United States illegally. House Republicans will

²⁹¹ “Tea Party Republicans Blast House GOP Immigration Plan As Unacceptable ‘Amnesty,’” Fox News Latino, January 31, 2014, <http://latino.foxnews.com/latino/politics/2014/01/31/tea-party-republicans-blast-house-gop-immigration-plan-as-unacceptable-amnesty/>.

²⁹² Ibid., p.1.

²⁹³ “Real Immigration Reform,” Tea Party Patriots, n.d., <http://www.teapartypatriots.org/real-immigration-reform/>

not stay by such strict rules. Their principles, clearly opposed by a caucus of Tea Partiers, allow for a path to legal status. Representative Paul Ryan (R-WI) defended the principles, asserting:

*“That is the kind of broad brush here — that is the kind of process we envision that is not a special pathway to citizenship, and it is not automatically, in any way, giving an undocumented immigrant citizenship.”*²⁹⁴

Republican leaders claim that their principles break off the Senate’s comprehensive bill and call for stricter border security and enforcement measures, while Tea Partiers believe the principles still favor undocumented immigrants over “those that have followed the law and are waiting to enter the country legally.”²⁹⁵

Similarly, Tea Partiers and more moderate Republicans in the House disagree on border security. The Grand Old Party’s (GOP) principles called for more border security as the top priority, which they assert S.744 does not do. The GOP wants to implement a robust border security plan, while only allowing a path to legal status for undocumented workers when necessary “triggers” are met. The Tea Party staunchly rejects this stance. The far-right group declares that any break for illegal immigrants who broke immigration laws is unacceptable. Additionally, the Tea Party disagrees with the GOP’s approach to border security. The Cato Institute, an American libertarian think tank that several Tea Partiers are members of, has argued that border security continues to be a method of wasting money, and only furthering immigration problems. The Tea Party concurs with this message, stating:

²⁹⁴ “Tea Party Republicans Blast House GOP Immigration Plan As Unacceptable ‘Amnesty,’” Fox News Latino, January 31, 2014, <http://latino.foxnews.com/latino/politics/2014/01/31/tea-party-republicans-blast-house-gop-immigration-plan-as-unacceptable-amnesty/>.

²⁹⁵ “Real Immigration Reform,” Tea Party Patriots, n.d., <http://www.teapartypatriots.org/real-immigration-reform/>.

*“As of right now, the amnesty bill [Senate-passed S.744] does not require any real border security measures. The bill only requires a plan to do so. An amendment by Sen. Ted Cruz was defeated in committee by all of the Democrats and two Republicans — Jeff Flake (R-AZ) and Lindsay Graham (R-SC) — that simply would have added a guarantee that the border be secured before any legalization. It was voted down.”*²⁹⁶

Therefore, not only do Democrats and Republicans disagree on how to implement reformed border security measures, but the Republican Party is divided as well. Currently, Republicans do not have the number of votes to constitute a majority to pass an immigration bill in the House. This situation will only change if Tea Partiers lose seats, and a more moderate Republican Party emerges after the 2014 midterm elections. With such a significant divide on the two most important issues in immigration reform — amnesty and border security — there is little hope that a bill will be passed in the near future.

On February 5, 2014, House Republican leaders changed their tone from their January 30 principles to reflect the difficulties in the immigration reform debate. While optimism had grown after President Obama’s State of the Union address and the release of the principles, it was quickly halted. Speaker of the House John Boehner (R-OH) stated:

*“There’s widespread doubt about whether this administration can be trusted to enforce our laws, and it’s going to be difficult to move any immigration legislation until that changes.”*²⁹⁷

²⁹⁶ Ibid., p.1.

²⁹⁷ David Nakamura and Ed O’Keefe, “Boehner: Immigration reform stalls because GOP has ‘widespread doubt’ about Obama,” The Washington Post, February 6, 2014, http://www.washingtonpost.com/politics/boehner-immigration-reform-stalls-because-gop-has-widespread-doubt-about-obama/2014/02/06/233b497a-8f55-11e3-b46a-5a3d0d2130da_story.html.

The GOP quickly shifted the focus to the Obama Administration, but critics saw right through the Speaker's comments. Speaker Boehner's comments were portrayed as an "attempt to place the burden on Obama illustrated the mounting opposition from hard-line conservatives and laid the groundwork for blaming the White House if a deal fails."²⁹⁸ The political implications for the Republican Party and Speaker Boehner are incredibly important. With Democrats seemingly unanimous and united on immigration reform, their bloc is set; and Republicans need to make smart political moves before the 2014 midterm elections. Representative Paul Ryan expressed doubt that the divided Congress could compromise on an immigration bill; and Representative Raúl R. Labrador (R-ID), "suggested that Boehner could lose his speakership if he pursues a bill in a midterm election year."²⁹⁹ Clearly, Speaker Boehner is in a difficult predicament. Senator Charles E. Schumer (D-NY), an influential sponsor of S.744, believes that Speaker Boehner is attempting to move forward on immigration without "many in his caucus rebelling."³⁰⁰ However, several Democrats believe that Republicans will charge into the 2014 midterm elections with an "anti-Obamacare" message, rather than "muddl[ing] the message [on immigration] before[hand]."³⁰¹

²⁹⁸ Ibid., p.1.

²⁹⁹ Ibid., p.2.

³⁰⁰ Ibid., p.2.

³⁰¹ Ibid., p.2.

II. The “Perfect” Bill

With the realization that any bill Congress passes will be incomplete, I will detail my “perfect bill.” Before I dive into the provisions I believe are most important, I feel it is pertinent to describe the “perfect” immigration bills for each political group, including my version of what a “perfect” bill constitutes. My bill will never pass, but it is important to know the key differences I am arguing. I will present each group’s bill category-by-category, visually demonstrating the major differences in the most important parts of immigration reform. My “perfect” bill is a comprehensive strategy, incorporating all areas of immigration. Therefore, STEM immigration and refugee protection are included. S.744 includes provisions for both categories, yet does not extensively address them like the *STEM Visa Act of 2013* and the *Domestic Refugee Resettlement Reform and Modernization Act of 2013* would. Therefore, the bill I propose is truly comprehensive, leaving nothing out in order to let all of the provisions work harmoniously. States must respect the comprehensive immigration reform bill, therefore eliminating contradictory state laws that have hindered overall progress by the federal immigration system. Section A is the presentation of the “perfect” bills for Republicans, Tea Partiers, and Democrats. Republicans favor robust border security spending and militarization, and are against a path to citizenship. Democrats are the opposite, favoring a path to citizenship and rejecting “throwing money at the border.” While the Senate was able to compromise on these two issues, a more conservative Congress will not. Several representatives are in favor of a metric-based system to measure success in border security, in place of simply increasing spending. Tea Partiers disagree with both groups. The Tea Party values low immigration numbers, with emphasis on securing the border in an efficient manner. Tea Partiers reject robust

spending and comprehensive bills, calling for a focus on preventing terrorism and drug smuggling at the border. I believe my bill is the best option (beginning with Section B), but presenting the differences in each group's reforms reflects the ideological gaps that are currently preventing meaningful discussions.

A. The Array of "Perfect" Bills

	Thesis Proposal	Republicans	Tea Party	Democrats
Comprehensive Bill	Yes, Immigration is intertwined with various issues, not able to separate them	No, A bill-by-bill approach allows focus on each area of immigration	No, A bill-by-bill approach allows focus on each area of immigration	Yes, A gridlocked Congress will never be able to follow through on a bill-by-bill approach
Temporary Worker Program	Top Priority, Substitutes S. 744's low-skilled visa program (W-Visa)	No priority, Restricted immigration will help native-born workers	No Priority, Restricted immigration will help native-born workers	W-Visa, S.744 implements the W-Visa that allows for long-term legal status in U.S.
Border Security	High Priority, Temporary worker program and legal pathways will drastically reduce illegal immigration and soften border security issues	Top priority, Robust spending, Enhanced militaristic technology	Top priority, Shifted focus onto terrorism and drug smuggling	Second priority, Metric-Based determination of success and appropriations
"Amnesty"	Second priority, Efficient and effective pathways to legal status, Elimination of backlogs	Second priority, Pathways to legal status	No priority, No help for those who broke the law	Top priority, Pathways to citizenship, Elimination of backlogs
Visa Numbers	Restricted, Employment-based visa priority	Restricted, Employment-based visa priority	Severely Restricted/ Possible Freeze, Reduced immigration helps solve U.S. unemployment	High, Family reunification is important

B. Temporary Worker Program

A new, modern temporary migrant worker program — similar to the Bracero Program — is a necessity. I firmly disagree with any bill that excludes such a program and replaces it with an insufficient worker visa. S.744 does little to combat the issue of low-skilled labor as the primary source of illegal immigration. I propose a temporary migrant worker program that would allow those who wish to work in seasonal industries where employers cannot find sufficient U.S. worker interest (according to the guidelines laid out in S.744), to be permitted to enter for the duration of the season under strict rules. These workers must be paid at least the real average wage or higher of U.S. citizens in the similar industry, and have access to human resources to file grievances. Additionally, incredibly strict background tests must be done. The workers in this program would need to pay the minimum taxes on their paychecks, just as seasonal U.S. citizen workers do; however, the temporary migrant worker would receive no benefit from social security. Similarly, they would have no right to education, and their families would not be permitted to enter. Temporary guest workers would be eligible for services at migrant health clinics, although employers would not be required to provide health insurance. A sufficient number of migrant health clinics would be developed if the guest worker program demands more than currently available. Similarly, temporary guest program workers would receive workers' compensation coverage. If an illness or injury is work-related, workers' compensation would cover all necessary healthcare and reimburse the worker for some of the wages lost. The guest worker must return home once the season has ended; and if a migrant overstays the temporary worker visa, they would be barred from reentry and must pay a \$1,000

fine once apprehended. Migrants enrolled in the program would be placed in a work-verification system — such as E-Verify in S.744 — in order to be tracked, and employers would be required to prove each month that the migrant worker was on site. Once the season was over, migrants would report to assigned stations to be deported through a specific protocol for the temporary migrant worker program.

This program, which I will call Bracero 2.0, would reduce future illegal immigration better than any other provision in S.744, while preventing injury to U.S. workers. A Bracero-like program is far more difficult to develop in 2014 than the original Bracero Program days; nonetheless, the key motivation for illegal immigration, the *economic* incentive, would be formed in a way that helped the United States and migrants. S.744 requires those who attain a W-visa, its version of the temporary worker visa, to remain in the United States for a year. The most important part of my proposal is that the temporary worker would be able to return home to their families who they are attempting to provide for. Therefore, the migrant fulfills their objective to earn money and can be with their family, and the U.S. workforce fills a gap. The temporary migrant worker program would remove the W-visa provision from S.744, yet would leave the same number of visas for the merit-based point system (detailed in the previous chapter). My “perfect” bill would allot between 40,000 and 70,000 visas for the temporary migrant worker program, based on the previous year’s visas filled and the unemployment rate.

C. Border Security

I have presented statistics in earlier chapters to demonstrate that increased spending on border security does not result in decreased illegal immigration. Border security has no effect on

the motive behind immigration flows. The economic push-pull factors between Central America and the United States provide incentives for people to come to the United States. For example, with the economic stability of the United States and the problems in Mexico, there have been a high number of Mexican immigrants inflowing to the United States for decades. When the U.S. economy went into deep recession in 2008, the inflow of illegal immigrants dropped significantly, as the incentive to enter had been removed. During the Bracero Program, illegal immigration was almost nonexistent. There was no reason to immigrate illegally, since Central Americans who needed the money would come to the United States to work, then return home once the agriculture season was over. Braceros could support themselves and their families and then go back to their home country. This temporary worker program was the most efficient for gaps in the U.S. workforce, and allowed for circularity in immigration. The removal of a temporary worker program that was similar in structure to the Bracero Program, matched with increased and intensified border security, has led to unprecedented numbers of illegal immigrants residing in the United States. Border security has militarized, and made a more dangerous border. Aliens have been funneled through the most dangerous parts of the border, and deaths have skyrocketed in cases involving illegal crossings. This intensified border security has also led to undocumented immigrants being more willing to risk deportation and stay in the United States. Illegal immigrants would rather settle and provide for their families than go back and take the chance of not being able to reenter. Consequently, circularity has decreased, with an incredible number of undocumented immigrants living in the United States. This has led to other problems. For example, the children of these illegal aliens are entitled to citizenship and public benefits. Since many of the undocumented immigrants are below the poverty line, their children

are more likely to receive welfare. Additionally, there are millions of people residing in the United States who do not pay full taxes, such as income tax. Thus, border security is far more intertwined than a piecemeal approach to immigration reform would account for. Republicans fail to see militarization of the border would do nothing but exacerbate the problem. There is no doubt that border security is important. Terrorism and drug trafficking are a constant threat; however, these two areas should be the target of border enforcement. Sufficient funds are needed to focus on these two issues, as well as to regulate immigration laws. Nonetheless, border security should not be the centerpiece of any reform bill. Efficient programs for necessary temporary work and adequate legal pathways for those who can contribute to important sectors, such as STEM areas, would help fix border security issues much better than throwing money at the border.

D. Amnesty

Republicans are against amnesty more than any other provision proposed in immigration reform. Citing the 1986 *Immigration Reform and Control Act*, Republicans believe that amnesty does nothing to help illegal immigration and sends a message that the United States will not enforce its immigration law strictly. I agree with the Republicans on this matter to an extent. While I believe the current immigration system has proven to be inefficient and unfair, that does not excuse crossing a border illegally and residing in a country without documentation. I do not fault the immigrant who chooses to do so out of desperation; however, the United States must maintain strong enforcement of its laws. My reform proposal would contain a path to legal status for these immigrants. The most conservative members of Congress and non-political

actors, Libertarians, reject even a path to legal status, which is impossible. Over 11 million people reside in the United States illegally, a problem that must be fixed. My path to legal status would mimic S.744 — a fine, payment of back taxes, etc. —, yet would stop short of citizenship. Rewarding those who stepped in front of others in line with citizenship is a message I refuse to send. Nonetheless, creating efficient programs to convert illegals into tax-paying citizens is essential for the economy of the United States as well as the federal deficit.

E. Family-Based Immigration

Family-based immigration, the focal point of the United States immigration system since the passage of the *Immigration and Nationality Act of 1965*, needs to be put behind employment-based immigration. Merit-based immigration must take top priority, promoting economic incentives in immigration and the future economy. S.744 has an excellent system to remove backlogs by 2021; however, 480,000 family-based visas is an incredibly high number. I agree with S.744's layout of family-based immigration, allowing for the family of an admitted immigrant to follow, thereby creating a new life in the United States. However, I disagree with S.744's refusal to reduce immigration in its entirety. Between family- and employment-based immigration, S.744 dedicates 620,000 visas each fiscal year. This number is unacceptable. While I am in favor of immigrants helping fill serious gaps in the U.S. workforce, immigration should not contribute to overpopulation. Therefore, my "perfect" bill would remove 100,000 family-based visas from S.744's number, leaving it at 380,000. Similarly, I would remove the family-based visa categories other than for the spouse or child of a current Lawful Permanent Resident (LPR) or U.S. citizen. As a result, all 380,000 appropriated visas would go to the

spouses or children of admitted immigrants. The nucleus of the immigrant's family is sufficient, and those outside of it would not be allowed to enter under the family-based immigration system.

F. Employment-Based Immigration

Employment-based immigration must become the focus of the United States in immigration reform. The current per-country limits are a hinderance on the acceptance of the most qualified people. Therefore, S.744 rightfully would eliminate the inappropriate provision, allowing those from China and India in backlogs that have higher skills than immigrants from other countries to be permitted to enter. As a result, those seeking employment would finally be put on a level playing field. With the elimination of per-country limits, the United States would receive the best talent. Two other provisions from S.744 are incredibly important: First, specific highly skilled and exceptionally talented immigrants would be exempt from the worldwide cap. This would apply to those who demonstrate "extraordinary ability" or "advanced degrees" in science, technology, engineering, or mathematics (STEM) fields from United States universities. Second, the spouses and children of cap-exempt immigrants would also not be counted against the limit. This provision would not only ensure that every immigrant allowed into the U.S. through employment-based immigration would be employed, but it would also remove issues with family members be permitted to enter over important skilled workers. My "perfect" bill would call for a fluctuating visa cap of 100,000 to 120,000 for employment-based immigration. Therefore, if one immigrant is admitted under employment-based immigration, they would be allowed 3.17 to 3.8 persons to enter with them, as opposed to S.744's ratio of 3.43 persons per immigrant. My "perfect" bill would also have a provision that called for a "Soft Cap," detailing

that if the number of spouses or children of admitted employment-based immigrants exceeds the cap, those spouses and children would be allowed to enter in order to keep the family unified. Overall, my worldwide cap for visas between employment- and family-based immigration would be 480,000 to 500,000, as opposed to S.744 and H.R.15's proposed 620,000. While I agree with several provisions that came out of the bipartisan S.744 and the House Democrat-proposed H.R. 15, I do not agree with the extremely high number of visas allotted. I am in favor of reduced numbers in total visas allowed in the U.S. immigration system, while implementing more efficient programs to promote legal immigration. Eliminating the family-based backlogs would take longer than S.744's estimation of 2021, but less visas with more efficiency is what the United States needs. Economic incentives drive immigrants to the United States, therefore U.S. immigration policy should reflect their importance.

G. STEM

Science, technology, engineering, and mathematics (STEM) reform must be included in a comprehensive immigration reform bill. I strongly disagree with the current path of the House to separate the issue from immigration reform efforts. STEM immigration is vital to the future of the United States' economy and workforce and currently boost booming STEM sectors in the United States. While I will not dive into the subject of the United States education system and its subpar output of STEM degree holders, it is evident that several STEM industries are not met with sufficient American workers. For the United States to maintain its global dominance, it must create incentives for immigrants to immigrate and stay in the United States. Until the United States can foster a domestic education system that provides sufficient numbers of STEM

degree holders at the caliber of foreign ones, U.S. immigration policy should reflect the need for STEM immigration. STEM occupations are the future of the global economy, and therefore it should be integrated into immigration reform. My “perfect” bill would give a fluctuating visa cap of 55,000 to 75,000 to STEM immigration, while mandating the requirements detailed in S. 744 for employers and verification of STEM degree.

H. Refugees

Refugee settlement reform must be incorporated into comprehensive immigration reform as well. Several attempts at separate bills have failed, and weak and unspecific provisions have been added to bills such as S.744 and H.R.15. Refugees are an important part of U.S. immigration. Vietnamese citizens from the Vietnam War have made strong contributions to the United States, which cannot be ignored. Future groups could potentially do the same, and the United States must commit to providing asylum to those who are in desperate need. Religious or racially discriminatory-based fears must be eliminated, ensuring objective treatment of all refugees. My “perfect” bill would use the provisions found in the *Domestic Refugee Resettlement Reform and Modernization Act* (version H.R.1784), which calls for an investigation into provisions to better handle future groups that are in danger. H.R.1784 also mandates an analysis of the genesis of the issues surrounding the refugee program, as detailed in the previous chapter. I would add a provision that called for a council to evaluate racial or religious motivations in the refugee program, thereby creating the fairest refugee policy the United States can formulate.

III. Conclusion

I have demonstrated through a historical overview, contemporary analysis, and future reform breakdown that an immigration system is extremely complex. Mix in politics, and the system becomes harder to compromise on. Congress will not pass reform in 2014; and when it does, the reform bill will be incomplete, riddled with political bias and insufficient provisions. Americans should not be surprised. Every bill that leaves Congress is imperfect, although they could be better if those who voted would act in a more bipartisan manner. This thesis provided the background necessary for one to understand the difficulties in agreeing on immigration reform in an attempt to help the reader comprehend why Congress is currently gridlocked. Strong ideological differences will make it problematic for reform to pass; nonetheless, my thesis attempted to provide an objective look at the facts. Finally, I proposed these facts through a hypothetical bill that cut through political bias and focused on what unbiased experts — the Congressional Budget Office and the Congressional Research Service — point to as best possible solutions.

The simple truth is that immigration is much more than policy. Our identity, our national character, feels threatened when we debate immigration. History shows us that immigration causes fear that we might lose that identity we hold so dear, so we reject and discriminate against those who wish to immigrate. Italians, Irish, Asians, and many more have felt the sting of hate, yet have come to be influential groups in the United States. Do we initially reject new cultures, races, and religions, only to accept them over time? Several aspects of Italian, Irish, and Asian cultures have become popular, but when did they become so ingrained in U.S. culture? Is it

possible Central Americans can assimilate eventually as well? Much like Central Americans, earlier immigrants created their own communities, spoke their native languages, and separated themselves from other Americans. The *Immigration and Nationality Act of 1965* was part of the Civil Rights Movement, attempting to ease this separation and the cultural discrimination against such groups. Samuel P. Huntington, as detailed in the introductory chapter, asserts that Hispanics will not integrate into U.S. culture unless political institutions become less hostile. What would it take? It is possible that another reform bill could aid Central Americans in their integration?

The overarching question that each wave of immigrants challenges is: who are we? Upon completing this thesis, I can unequivocally say that we are a nation of immigrants. I am French Canadian, Irish, and Italian, and each part of my heritage has had an incredible impact on the United States. I feel no discrimination based on my heritage, although my great-grandfather did. So, is this an inherent part of the immigration debate? I believe it is. Racial, ethnic, and religious biases will continue to charge debates on immigration. There are Americans whose family members were discriminated against, put into sub-par working conditions, and forced to live on the bare minimum, but will argue Mexicans (in the same situation) are stealing America. This “robbery” is the feeling of a shift in identity, not so much that Mexicans are bad people. Some argue the American identity had been diluted, but shall we let our minds be clouded by the same discriminatory thoughts of those who showed prejudice against our ancestors? Our decisions will affect generations to come, shaping the future identity of the United States. We must be accepting, realizing that the sustainability of the United States does not come in its race or its religion, but on its ability to create a unified nation, working as one.

Works Cited

A Guide to H.R.15: Understanding the 2013 Senate Immigration Bill. Washington, D.C.: American Immigration Council, 2013.

A Guide to S.744: Understanding the 2013 Senate Immigration Bill. Washington, D.C.: American Immigration Council, 2013.

Anderson, Stuart. *Keeping Talent in America*. Virginia: National Foundation for American Policy, 2011.

Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based Preferences Registered at the National Visa Center. Washington D.C.: Department of State, 2013.

Avila, Jim, Serena Marshall, and Shushannah Walshe. "Immigration Overhaul Clears Pivotal Vote in Senate." June 2013. ABC News. <http://abcnews.go.com>.

Barnett, Don. "Refugee Resettlement: A System Badly in Need of Review." May 2011. Center for Immigration Studies. <http://www.cis.org/refugee-system-needs-review>.

Blake, Aaron and David Nakamura. "Heritage: Immigration bill would cost \$6.3 trillion." The Washington Post, May 6, 2013. <http://www.washingtonpost.com>.

Border Security, Economic Opportunity, and Immigration Modernization Act, H.R.15, 113th Cong. (2013).

Border Security, Economic Opportunity, and Immigration Modernization Act, S.744, 113th Cong. (2013).

Breaking Down the Problems: What's Wrong with Our Immigration System? Washington, D.C.: Immigration Policy Center, 2009.

- Brick, Kate, A.E. Challinor, and Marc R. Rosenblum. *Mexican and Central American Immigrants in the United States*. Washington, D.C.: Migration Policy Institute, 2011.
- Bruno, Andorra. *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues*. Washington, D.C.: Congressional Research Service, 2012.
- Bruno, Andorra. *Refugee Admissions and Resettlement Policy*. Washington, D.C.: Congressional Research Service, 2012.
- Bui, Jonathan. "What Will Happen to Undocumented Immigrants If Romney Wins?" September 2012. WordPress.com. <http://election2012ucd.wordpress.com/2012/09/16/what-will-happen-to-undocumented-immigrants-if-romney-wins/>.
- Carle, David. "Leahy Introduces Landmark Refugee Protection Act." March 2010. The United States Senate. <http://www.leahy.senate.gov>.
- Carrasquillo, Adrian. "Conservative groups blast Heritage foundation's \$6.3 trillion 'amnesty cost.'" May 2013. NBC Universal. <http://nbclatino.com>.
- Center for American Progress Immigration Team. "The Top 5 Things the Senate Immigration Reform Bill Accomplishes." June 2013. Center for American Progress. <http://americanprogress.org>.
- Citrin, Jack, Amy Lerman, Michael Murakami, and Kathryn Pearson. "Testing Huntington: Is Hispanic Immigration a Threat to American Identity?" United States: American Political Science Association, 2007.
- Corker, Bob. "The Hoeven-Corker Amendment: Myth vs. Fact," June 2013. The United States Senate. <http://www.corker.senate.gov>.
- Coyne, Christopher J. and Peter J. Boettke. "Institutions, Immigration, and Identities." NYU Journal of Law and Liberty, 2005. http://www.law.nyu.edu/sites/default/files/ECM_PRO_060942.pdf.

“Cuban Immigrants.” September 2011. Immigration in America. <http://immigrationinamerica.org/453-cuban-immigrants.html>.

Elmendorf, Douglas W. Douglas W. Elmendorf to Patrick J. Leahy, June 24, 2013. In Congressional Budget Office website, <http://www.cbo.gov>.

Elmendorf, Douglas W. *The Economic Impact of S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act*. Washington, D.C.: Congressional Budget Office, 2013.

García, Manuel. *The Bracero Program*. Texas: University of Texas, 2001.

Hatch, Patricia. *U.S. Immigration Policy: Family Reunification*. Washington, D.C.: League of Women Voters, 2007.

Hatton, Timothy J. *American Immigration Policy: The 1965 Act and Its Consequences*. Canberra: Australian National University and University of Essex, 2012.

Hing, Bill Ong. “Corker-Hoeven Provision Would Exacerbate the Immigration Death Trap.” The Huffington Post, November 11, 2013. <http://www.huffingtonpost.com>.

“House conservatives: No immigration reform in 2014.” February 2013. CBS News. <http://cbsnews.com>.

Huntington, Samuel P. *Who Are We?: The Challenges to America's National Identity*. United States: Simon & Schuster, 2005.

Immigration Act of 1924, Pub. L. 68-139, 43. Stat. 153 (1924).

“Immigrants Behind 76% of Patents from Top American Universities.” June 2012. MikeBloomberg.com. <http://www.mikebloomberg.com/index.cfm?objectid=29767068-C29C-7CA2-F879E8028EF01C25>.

Jones, Maldwyn A. *American Immigration*. Chicago: University of Chicago, 1992.

Kennedy, Edward M. "Refugee Act of 1980." *International Migration Review*, 1981. <http://www.rcusa.org/uploads/pdfs/International%20Migration%20Review,%20Refugee%20Act%20of%201980%20by%20Edward%20M.%20Kennedy,%20Spring%201981.pdf>.

"Key Data Points from Pew Research." September 2013. Pew Research Center. www.pewresearch.org/.

Kirchner, Julie. "The Corker-Hoeven Amendment is a Mirage." *The Federation for American Immigration Reform*, June 23, 2013. <http://immigrationreform.com>.

Library of Congress. "H.R.1784 - Domestic Refugee Resettlement Reform and Modernization Act of 2013." 2013. United States Legislative Information. <http://beta.congress.gov>.

Library of Congress. "S.883 - Domestic Refugee Resettlement Reform and Modernization Act of 2013." 2013. United States Legislative Information. <http://beta.congress.gov>.

Library of Congress. "H.R.459 - STEM Visa Act of 2013." 2013. United States Legislative Information. <http://beta.congress.gov>.

Library of Congress. "S.303 - STEM Visa Act of 2013." 2013. United States Legislative Information. <http://beta.congress.gov>.

Ludden, Jennifer. "1965 Immigration Law Changed Face of America." May 2006. National Public Radio. <http://www.npr.org/templates/story/story.php?storyId=5391395>.

Massey, Douglas S. and Karen A. Pren. "Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America." *Population and Development Review*, March 21, 2012. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407978/>.

McKay, Ramah. "Family Reunification." May 2003. Migration Policy Institute. <http://www.migrationpolicy.org/article/family-reunification>.

"Mexican Immigrants in the United States." April 2009. Pew Hispanic Center. <http://pewhispanic.org/files/factsheets/47.pdf>.

"MILESTONES: 1866–1898." 2014. U.S. Department of State Office of the Historian. <http://history.state.gov/milestones/1866-1898/chinese-immigration>.

"Milestones: 1921–1936." July 2007. U.S. Department of the State Office of the Historian. <https://history.state.gov/milestones/1921-1936>.

Mortensen, Ronald W. "Hoeven-Corker Amendment – Long on Amnesty, Short on Everything Else." June 2013. The Center for Immigration Studies. <https://cis.org>.

Nakamura, David and Ed O'Keefe. "Boehner: Immigration reform stalls because GOP has 'widespread doubt' about Obama." The Washington Post, February 6, 2014. http://www.washingtonpost.com/politics/boehner-immigration-reform-stalls-because-gop-has-widespread-doubt-about-obama/2014/02/06/233b497a-8f55-11e3-b46a-5a3d0d2130da_story.html.

Nowrasteh, Alex. "Heritage Immigration Study Fatally Flawed." April 2013. The Cato Institute. <http://www.cato.org/blog/heritage-immigration-study-fatally-flawed>.

Nowrasteh, Alex. "The Border Security Obsession." The Cato Institute, June 24, 2013. <http://www.cato.org>.

Obama, Barack. "State of the Union Address." Speech, Washington, D.C., January 29, 2014. The Washington Post. <http://www.washingtonpost.com>.

Passel, Jeffrey S. *Unauthorized Immigrant Population: National and State Trends*. Washington, D.C.: Pew Hispanic Center, 2010.

Passel, Jeffrey S., D'vera Cohn, and Ana Gonzalez-Barrera. "Population Decline of Unauthorized Immigrants Stalls, May Have Reversed." September 2013. Pew Hispanic Center. <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.

Patterson, Crystal. "RELEASE: \$37 Million in Revenue Lost Each Day Without Immigration Reform." Center for American Progress, November 7, 2013. <http://americanprogress.org/>.

Patterson, Crystal. "STATEMENT: CAP's Angela Kelley on Senate Passage of S. 744." June 2013. Center for American Progress. <http://www.americanprogress.org>.

Phillip, Abby D. "Critics Doubt Immigration Overhaul Would Cost Trillions." May 2013. ABC News. <http://abcnews.go.com>.

Phinney, Jean S., Gabriel Horenczyk, Karmela Liebkind, and Paul Vedder. "Ethnic Identity, Immigration, and Well-Being: An Interactional Perspective." The Society for the Psychological Study of Social Issues, 2001. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/16666/JSI2001.pdf?sequence=2>.

Povell, Marc. "The History of Vietnamese Immigration." June 2005. The American Immigration Law Foundation. http://www.aifl.org/awards/benefit2005/vietnamese_essay.shtml.

Preston, Julia. "Republicans Criticize Rules to Aid Syrians Seeking Asylum." February 2014. The New York Times. http://www.nytimes.com/2014/02/08/us/rules-to-aid-asylum-seeking-refugees-are-called-security-threat.html?_r=0.

"Real Immigration Reform." Tea Party Patriots, n.d.. <http://www.teapartypatriots.org/real-immigration-reform/>.

Refugee Act, Pub. L. 96-212, 94 Stat. 102 (1980).

Rector, Robert and Jason Richwine, Ph.D., "The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer." May 2013. The Heritage Foundation. <http://>

heritage.org.

Richman, Josh and David E. Early. "Immigration debate: Even with both sides at the table, reform remains a complex goal." San Jose Mercury News, January 30, 2014. <http://www.mercurynews.com>.

Rosenblum, Marc R. and Kate Brick. *U.S. Immigration Policy and Mexican/Central American Migration Flows: Then and Now*. Washington, D.C.: Migration Policy Institute, 2011.

Rosenblum, Marc R. and Ruth Ellen Wasem. *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S.744*. Washington, D.C.: Congressional Research Service, 2013.

Schmal, John P. "Mexican Immigration in the Early Years: Helping to Build America's Railroads." February 2005. HispanicVista Columnists. <http://www.hispanicvista.com/hvc/Columnist/jschmal/020705jschmal.htm>.

"Senators Introduce the Refugee Protection Act of 2010." March 2010. American Immigration Council. <http://immigrationimpact.com/2010/03/16/senators-introduce-the-refugee-protection-act-of-2010/>.

"Tea Party Republicans Blast House GOP Immigration Plan As Unacceptable 'Amnesty.'" Fox News Latino, January 31, 2014. <http://latino.foxnews.com/latino/politics/2014/01/31/tea-party-republicans-blast-house-gop-immigration-plan-as-unacceptable-amnesty/>.

"Text of Republicans' Principles on Immigration." The New York Times, January 30, 2014. <http://www.nytimes.com>.

"Three Decades of Mass Immigration: The Legacy of the 1965 Immigration Act." September 1995. Center for Immigration Studies. <http://cis.org/1965ImmigrationAct-MassImmigration>.

“The Immigration Act of 1924.” February 2001. Portland State University. http://www.upa.pdx.edu/IMS/currentprojects/TAHv3/Content/PDFs/Immigration_Act_1924.pdf.

“The Immigration Act of 1965.” April 2008. U.S. Department of State. <http://iipdigital.usembassy.gov/st/english/publication/2008/04/20080423214226eafas0.9637982.html#axzz2uoxVzlhT>.

“The Senate’s Comprehensive Immigration Bill: Top 10 Concerns.” June 2013. The Heritage Foundation. <http://www.heritage.org>.

“USA QuickFacts from the U.S. Census Bureau.” June 2013. U.S. Census Bureau. <http://quickfacts.census.gov/qfd/states/00000.html>.

“U.S. Immigration Since 1965.” 2010. A&E Television Networks. <http://www.history.com/topics/us-immigration-since-1965>.

Wasem, Ruth Ellen. *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*. Washington, D.C.: Congressional Research Service, 2012.

Wasem, Ruth Ellen. *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*. Washington, D.C.: Congressional Research Service, 2011.

Wasem, Ruth Ellen. *Permanent Legal Immigration to the United States: Policy Overview*. Washington, D.C.: Congressional Research Service, 2012.

Wasem, Ruth Ellen. *U.S. Immigration Policy on Permanent Admissions*. Washington, D.C.: Congressional Research Service, 2012.

“Who Was Shut Out?: Immigration Quotas, 1925-1927.” April 2002. History Matters. <http://historymatters.gmu.edu/d/5078/>.

Zuckerman, Jessica and David Inserra. "Corker–Hoeven Immigration Amendment: Far from a Game Changer." June 2013. The Heritage Foundation. <http://blog.heritage.org>.